STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

- -

The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown &
Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

- -

DEPOSITION OF PHILIP MORRIS INCORPORATED

(DESIGNEES CLARE PURCELL, KENNETH S. HOUGHTON,
ELLEN MERLO AND ROBERT L. MIKULAY)

VOLUME I, PAGES 1 - 292

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(The following is the deposition of PHILIP MORRIS INCORPORATED (DESIGNEES CLARE PURCELL, KENNETH S. HOUGHTON, ELLEN MERLO AND ROBERT L. MIKULAY), taken pursuant to Notice of Taking Deposition and Rule 30.02(f), by videotape, at the offices of Dorsey & Whitney, Attorneys at Law, 250 Park Avenue, 16th Floor, New York, New York, on September 23, 1997, commencing at approximately 9:13 o'clock a.m.)

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ALSO PRESENT:

David Grandes, Paralegal

Eric Henley, Paralegal

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I N D E X

EXHIBITS		DESCRIPTION	PAGE MARKED
PM	1300	Plaintiffs' Document Requests Relating to Formulae, 5 pages	19
	1303	January 23, 1990 interoffice correspondence, Keritsis to Callaham, Bates 2023957309-23	112
	1304	July 29th, 1987 New Tar Quality, Pyrolysates to Distillates, Bates 2023186690-A	128
	1305	Searchmanager 370 - Documents Printed from Database, by Jeanneret, Bates 2028635742	133
	1306	March 21, 1963 letter, Kelly to Boling, Bates 1005040524	195
	1307	December 16, 1968 correspondence, Johnston to Seligman, Bates 2023066583-92	201
	1308	March 20, 1984 The Cigarette Consumer, Bates 2500002189-207	255
	1309	Smoker Dynamics, Bates 2023741642-78	268

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P R O C E E D I N G S

(Witness sworn.)

CLARE PURCELL

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. GORDON:

Q. Good morning. Could you state your full name for the record, please.

A. Clare Ann Catherine Corcoran Purcell.

Q. Ms. Purcell, this is the second time you're being deposed in this litigation, so we're going to assume that your -- is your position the same as it was when we took your deposition a few months ago?

A. What does that mean? I'm sorry. My position is --

Q. At Philip Morris.

A. Yes.

Q. Okay. Then I won't go into your background right now.

It's my understanding you are appearing here today to speak on behalf of Philip Morris with respect to its collection and production of documents relating to its cigarette formulas. Is that your

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understanding?

MR. NUNLEY: Objection.

A. Category II documents.

Q. Okay. So the jury understands what Category II documents are, could you explain that phrase.

A. There was an order that defined Category II as documents that would be highly sensitive and the disclosure of those documents could cause irreparable competitive harm, and there was another section of that that then to make them Category II said that they had to have information on ingredients or formula, I believe.

Q. Ingredients or formula for --

A. Cigarettes.

Q. -- Philip Morris cigarettes?

A. That's right.

Q. Okay. And when did you first become in -- strike that.

Were you personally involved in any aspect of collecting or producing the Category II formula or ingredient documents?

A. I don't personally maintain any of those files. Is that what you mean?

Q. No. I -- my question goes to the process that Philip Morris went through to -- well let me back

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up. Strike all that.

Philip Morris has in fact produced documents designated as Category II formula or ingredient documents; is that correct?

A. That's correct.

Q. Were you personally involved in any aspect of collecting or producing any of these documents?

MR. NUNLEY: Objection as to form. You may answer.

A. I became involved for the purposes of this deposition or my earlier deposition in the process generally by interviewing people who were directly involved or who had those documents.

Q. Do I take that to mean that you yourself were not personally involved in gathering or producing the Category II documents?

A. That's correct. I did not personally maintain them. I did not personally collect them or produce them.

Q. When did you first become involved in interviewing people who were personally involved?

MR. NUNLEY: Objection as to form.

Personally involved in the Category II collection and production?

MR. GORDON: Correct.

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A. Well you'll remember in that two days we spent together -- that seems a little bit longer than two days -- last spring we talked about this process. I think some of the people who I spoke to then were involved in Category II documents, so I may have talked to them earlier, but more recently I went back and interviewed about 12 or 15 people in the company who I knew would have had records that would fall into the Category II group.

Q. Okay. You understand that Category II documents have been produced by Philip Morris subsequent to when we last met in a deposition; correct?

A. Yes, all the way up to yesterday.

Q. Right. And in fact, more are being produced tomorrow; correct?

A. I believe so, this week.

Q. Are you aware of the documents that are being produced tomorrow?

A. I don't think I can name them. I know that we're still -- we still have efforts ongoing to meet the September 4th order.

Q. Who's responsible for those efforts?

MR. NUNLEY: May I just say is it tomorrow or Thursday that the -- you keep referring to production of documents tomorrow and I --

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MR. GORDON: Well there's -- correct me if I'm wrong, but my understanding is there were certain documents required to be produced within 20 days of the September 24th order.

MR. NUNLEY: You may be right. I may be off by a day. Sorry. Although I note that there is an extension in the case. I'd ask to -- I believe the extension -- I mean, I don't want to debate it with you here. I don't mean to interrupt you, but I think there's a -- the order entered by the court went to paragraph 1 of his prior order, and I think that was both 1A and 1B, but obviously the order speaks for itself.

MR. GORDON: We -- we can speak off the record --

MR. NUNLEY: Certainly.

MR. GORDON: -- because my understanding is that it specifically exclude -- the relief sought specifically excluded the -- the computer model information, but we'll address that after Ms. Purcell.

BY MR. GORDON:

Q. Who's involved in the ongoing efforts that you just spoke of?

MR. NUNLEY: Objection as to form.

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A. We have -- since the order came out, we have had counsel, outside counsel, in-house counsel, and employees involved in that review and production.
Q. Who are the employees involved?
A. I know that there is still an ongoing issue with a computer model, so the employees who work closely with that in R&D may be involved. There may be additional work that needs to be done to correct some typographical or printing problems on what we produced to you yesterday, so there would be other individuals in R&D who may be involved in that.
Q. Who are the Philip Morris employees involved in searching for and producing computer models?
A. I know the person who has been responsible for most of the time for that computer model, and that's Bill Dwyer in R&D.
Q. What is Mr. Dwyer's title?
A. I'm not sure. It may be senior research scientist.
Q. Is he one of the people you've interviewed?
A. I have spoken with him, yes.
Q. When was the most recent time you spoke with him?
A. Oh, gee, I think sometime in the past two or -- two weeks.

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Q. Did you speak with him specifically about what he is doing to respond to the portion of the court order relating to computer models?

A. I spoke with him just to get a better understanding of what that computer model was. I don't normally work with it or nor did I have any knowledge of it before that.

Q. Well what did he tell --

MR. NUNLEY: Mr. Gordon, excuse me, just an objection to this line. I don't know frankly at this point whether this model that you're referring to is a Category II document or a Category I document. Obviously you -- you can't know either, but to the extent it's a Category -- it is not a Category II document, it would fall outside the scope of this notice. I'm certainly not going to stop Ms. -- your questioning or Ms. Purcell testifying about it, but I just put you on notice if it turns out that it's not a Category II document, I take the position that -- that Ms. Purcell cannot testify on behalf of the company as to its -- questioning relating to that model.

Q. What did Mr. Dwyer tell you to give you an understanding of what the computer model was?

A. He described it to me more or less as a

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beginner's tool where you could work with design parameters and get information or project information on a prototype performance parameter.

Q. Where is it your understanding that the computer model is kept?

A. I think it's kept in R&D on the main system.

Q. In Richmond?

A. Yes.

Q. In your inquiries did you make any efforts to determine whether there were any computer models that were located in Neuchatel, Switzerland?

A. No. I asked him specifically if he knew if that model was in use elsewhere, and he said he didn't know if it had ever been used anywhere else.

Q. You're talking about -- strike that. What -- What do you mean by "that model"?

A. Well I don't know -- I don't mean to imply that there are any others. I don't know if there are any others, but this was the first I'd heard of a design model, so I asked him if this was something that he worked with, did other people have it. I asked more along the lines of security questions, you know, who might have access to it, and he didn't know of anyone outside the people who use it.

Q. In answer to my question about a computer model

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in Neuchatel, you said that he didn't know if that -- that model was in use elsewhere. Did you mean to refer to a model -- a computer model in Neuchatel, Switzerland?

A. No. I don't know of any model in Neuchatel, Switzerland.

Q. Okay. So whether there is one or not, you have no idea?

A. That's correct.

Q. And your inquiries today in order to speak on behalf of Philip Morris for collection of Category II documents, you did not determine whether or not there are any predictive computer models in Neuchatel, Switzerland?

A. I did not ask that question, that's right.

Q. And you don't know?

A. I don't know.

Q. Okay. Who were the -- the 12 to 15 people you interviewed?

A. I'll try to remember them all. I know I spoke with Marian Debardeleben in R&D. I spoke with Cliff Lilly, Jerry Whidby, David Williams, Elmore Cooke, Mary Beth Lambert, Greg Nixon, Brad Scott, Jim Myracle, Lance Pullano and Les Thomas.

Those are all the ones I recall right now. How

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many's that?

Q. 11. That's about right.

A. I'm sorry, Mary Susan Schreck.

MR. NUNLEY: Pardon me, Ms. Purcell, let me hand something to the court reporter.

(Discussion off the stenographic record.)

Q. Was there one person who was in charge of the Category II collection?

MR. NUNLEY: Objection as to form.

A. There was not -- I wouldn't describe it as one person in charge. The collection did ask certain individuals to take a more significant role.

Q. Who were the people that had the most significant role in the Category II collection?

A. When I say "more significant," it was more a coordinating role, and that would be Cliff Lilly and Jerry Whidby in R&D and Jim Myracle and Brad Scott in manufacturing, I believe.

Q. Who had overall responsibility for selecting which people to participate in the collection process?

MR. NUNLEY: Objection as to form.

A. I'm not sure how to answer that. Would it help if I described sort of the chronological process of how we -- how we focused on Cat II, and --

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Q. Sure.

A. -- would that help?

You will remember that we had the collection ongoing in the fall of '95. That winter, early '96 and late in the fall of '95, there were individuals who had raised some issues with in-house counsel and outside counsel about the sensitivity of some of the documents that may fall within the broad scope statement that we were using while we were conducting the interviews. There was a meeting held early in '96 with in-house and outside counsel and senior folks in Richmond both on the R&D side and the manufacturing side, and they sat down trying to determine how they would break out those sensitive or trade-secret or what we refer to now as Category I and Category II documents and how we could collect and produce them but still protect them.

By March of that year, in-house counsel issued a memo to those same people that described or clarified a little bit more what would be considered those documents, how we would determine what those documents were. That was then shared with individuals who we believed would have those documents, and when individuals were foldering -- you remember the process; we put folders around their

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files or counsel came in and reviewed their office and put folders around their files. If they came across something that they thought was what we refer to as ultra trade secret, could be Category I, could be Category II, they would put it in a different colored folder, and those files didn't get picked up and taken away along with the rest of the collection. They waited for Cliff and Jerry or Brad and Jim to come by and rereview everything in those folders because they felt that that would give a little bit more consistency to the determinations of what fell within those categories, and they were also able to cut back on some overdesignation that employees tended to do.

At that point they were then processed on site if they had decided when -- "they," I mean Cliff and Jerry and Brad and Jim. If they decided that these actually were not in that category, they would put them back in the other colored folder and send them off with the rest of the collection; otherwise, they kept them on site and did the copying on site.

Did that answer your question?

Q. And this is a process that was ongoing during 1996?

A. Yes.

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Q. At the same time that other documents were being collected as well?
A. Yes.
Q. Okay.
MR. GORDON: Can I have the court reporter mark this, please.
(Plaintiffs' Exhibit 1300 was marked for identification.)
THE WITNESS: Thank you.
BY MR. GORDON:
Q. Ms. Purcell, I'm showing you what's been marked as Plaintiffs' Exhibit 1300, a five-page document bearing the caption of this case and entitled "PLAINTIFFS' DOCUMENT REQUESTS RELATING TO FORMULAE" dated December 16, 1996.
Have you seen this document before?
A. Yes, I have.
Q. When was the first time you saw it?
A. I don't recall when the first time was that I saw it. I've looked at it a couple of times recently preparing for today.
Q. Okay. And you see that the requests in this document seek the specifications, ingredients and full formula for each brand of cigarettes that Philip Morris marketed in Minnesota from 1954 to the

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present; correct?

A. Documents sufficient to disclose those, yes.

Q. Right. And this was a request that Philip Morris received at the end of 1996; correct?

A. That's correct.

Q. So the process that you've just described was not in response to the requests that are set forth in Exhibit 1300; correct?

MR. NUNLEY: Objection as to form.

A. Can you try that one again?

Q. The doc --

The process that you described a little bit earlier was a process that was ongoing in 1996 while other document requests were being responded to by Philip Morris; correct?

A. That's correct.

Q. And this document request -- by "this," I mean Exhibit 1300 -- didn't come to Philip Morris until December of 1996; correct?

A. That's correct.

Q. So the process that had been ongoing up to that point was not in response to the requests in Exhibit 1300; correct?

A. That's right. It was not a new process established to respond to this.

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Q. Okay. What --
Well, you hadn't gotten this yet?
A. That's right.
Q. Okay. What I want to know is what Philip Morris did after it got the requests set forth in Exhibit 1300; in other words, after mid-December 1996, in order to -- to collect and produce documents responsive to these specific requests.
A. Okay. I think in March you and I touched on this a little bit because I remember going over this at the break with David Williams. What was done initially and when these were received is there was a meeting held in-house of some of the people who would be key people who might have that information. That meeting included in-house counsel, Jim Schardt, as well as Dick Cox from research, David Williams. I think Mary Susan Schreck was there. I think Cliff Lilly was there, and there may have been others.
Q. Who is Jim Schardt?
A. Jim Schardt is an in-house Philip Morris attorney.
Q. How about David Williams?
A. David Williams works in a division called product integrity in R&D.
Q. Is there anyone else that you can think of who

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was at this initial meeting following the document requests in --

A. I think Elmore Cooke may have been there or Mary Beth Lambert, but someone from that group was there.

Q. What group is that?

A. Flavor technology.

Q. You were not there?

A. I was not there.

Q. What did you do to find out what happened at that initial meeting?

A. I spoke with Cliff Lilly a while ago to find out what happened at that meeting and again with David Williams more recently. I was told -- and I think I went through this a little bit with you in March -- that they held that initial meeting in an attempt to focus specifically on these two requests and determine whether or not -- what it would take to give you what you were asking for in these requests, what documents, what categories of documents, what types of documents you would need to have to meet this request.

They then went back to their respective areas. They checked with the collection that had gone on. They checked with others in their departments, and then they got back together again to make sure that

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they in fact had a good list of all the types of documents that you would need to get this information, and I think those were outlined in a brief that we filed in March.

Q. Where were the documents collected from?

A. Generally speaking, documents would be collected from leaf and from R&D. Within R&D, it would be the product integrity area and the flavor technology area.

Q. How about manufacturing?

A. Leaf is in manufacturing.

Q. Where is leaf located?

A. They're located in the operations center in Richmond.

Q. How about R&D? Where is that located?

A. R&D is -- our R&D operation is in Richmond as well.

Q. So all of the documents that were collected for the Category II production came from Richmond; is that correct?

MR. NUNLEY: Mr. Gordon, just a point of clarification: You refer to Cat II. Just so we're clear, when you say all documents for the Cat II production, you know, there are non-documents of this type that are Cat II. There's some advertising

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documents. There's some marketing documents.

I mean, you're talking about Cat II documents responsive to this request?

MR. GORDON: Right.

MR. NUNLEY: Okay.

MR. GORDON: I'm talking about the -- the Exhibit 1300, specifications, ingredients and the full formula documents.

MR. NUNLEY: Documents sufficient to disclose those.

MR. GORDON: Right.

BY MR. GORDON:

Q. Those came from -- all came -- would have all -- have all come from Richmond?

A. I believe so, yes.

Q. No place else was searched for responsive documents to these requests?

MR. NUNLEY: Objection as to form.

A. The entire company was searched under the broad scope. To specifically see if we had documents sufficient to show both of these areas, one and two, that group got together and that's where the bulk of the documents would be, because it's just in those areas that we really concentrate most of that information.

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Q. When you talk about the broad scope, you're talking about that statement or scope statement that was prepared in 1994?

MR. NUNLEY: Objection.

A. I can't remember the date when the scope statement was prepared, but there was a scope statement used in the general collection at the beginning of the collection for this case.

Q. And that was before Exhibit 1300 was served; is that correct?

A. That's correct.

Q. So my question is: Was anyplace other than the areas in Richmond that you've mentioned specifically searched for documents responsive to Exhibit 1300?

A. I believe that any documents that might have been identified under the broad search were considered when we were making this production, but in order to speak to the people who know the most about these documents, they held those meetings because those are the people who would generate and maintain basically what these documents are.

Q. What were the security arrangements for these documents in Richmond?

MR. NUNLEY: Do you mean prior to collection?

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MR. GORDON: Right.
A. Prior to collection how were they maintained?
Q. Right.
A. As far as I know, all of the formula information, all of the ingredient information, all of the processing specs are maintained on site in safes or locked files and are available to a very limited number of people. They are never sent to off-site storage, so there wouldn't be copies of all of those in central files or in any of our storage facilities.
Q. Who had access to them during December of 1996?
A. How do you mean "access"? Generally speaking --
Q. Yes.
A. -- who would have access to them? The individuals who needed to work with them.
Q. Who would that be?
A. The ingredient --
MR. NUNLEY: Could I -- well, objection as to the -- to the form. When you say "access to them," just I'd like for the record to be clear who has access to which of the documents.
MR. GORDON: I would like to be clear on that too.
MR. NUNLEY: But no, as you asked it,

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Corey, it -- it read as though her answer might be that everyone has access in the list that she gives. I don't think that's the case.

THE WITNESS: No, that's not the case.

A. Counsel also had access insofar as trying to help us -- during this time period to help us collect the documents, but the information is segmented more or less.

The ingredient information would be available in the product integrity department, largely to David Williams. The flavor information would come from the flavor technology group and is held in a locked safe in Elmore Cooke's office. The processing specs would come from Jim Huchison in the leaf department, and they're held in a locked file cabinet in his office.

I'm sorry, Jim is one who I forgot to mention earlier having spoken with.

MR. NUNLEY: And I think -- I don't know if you finished, but you've got the leaf department.

A. And Brad Scott might hold blend information.

Q. Where would information about the reconstitution process be?

A. There would be processing specs on that process.

Q. That would be Jim Huchison's area?

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A. Yes, he -- he has the processing specs for the most part.

Q. What's the difference between ingredients and flavor?

MR. NUNLEY: Objection as to form.

Q. In -- in terms of the documents that -- that would be in those two areas.

A. In -- in terms of the way I described the differences of where the information is held, the flavor technology group where Elmore Cooke is, they develop flavors and they do some process feasibility and they develop the -- the actual sort of flavor recipes. But David Williams' area has the vendor disclosures that tell you what's in a flavor, so I refer to the ingredients as being from David Williams' area and the flavors as being from Elmore Cooke's area.

Q. Who was --

Who was responsible for providing the list to the federal government of ingredients used in cigarettes?

MR. NUNLEY: Objection as to form, vague.

A. The compilation of the annual HHS list is completed in product integrity, David Williams' area.

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Q. With respect to the leaf blend documents, has Philip Morris produced complete leaf blend information for every cigarette sold in Minnesota from 1954 to 1994?

MR. NUNLEY: Objection as to form.

A. Philip Morris has produced documents sufficient to disclose the information requested in the December 16th request, including leaf information.

Q. How did you determine that?

A. I met yesterday with counsel and went through the types of documents with some specificity with Ken Houghton. I also discussed the meetings and the point of those meetings that I mentioned earlier with Cliff Lilly. I also interviewed Brad Scott and asked him what he knew about what was produced.

All of them told me that they feel that given the information that was pulled together to answer the December 16th request, that you have everything asked for.

MR. NUNLEY: And, Mr. -- Mr. Gordon, on that point, there's something I'd like to say out of the presence of the witness, not now, but I'd like to -- to do it at the end of the deposition because I think that -- well I think there's a letter on that point.

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MR. GORDON: Okay.

Q. What was Ken Houghton's involvement in the Category II collection?

A. I don't know.

Q. How was it that you were talking to him yesterday?

A. He and I were both in the building across the street in prep sessions and decided to spend some time talking about some of the Cat II while he was there.

Q. Did he give you any information about the Category II or did he just happen to be there when you were discussing it with others?

A. He was there, and basically I -- it was helpful for me to spend some time going through those types of documents. I don't normally see them in my general work, in my normal job, so Ken was a little bit more familiar with some of the documents, and I wanted to make sure I understood what they were.

Q. Did you actually look at Category II documents yesterday?

A. Yes, we --

MR. NUNLEY: Well I'll let her answer that question, but I think, Mr. Gordon, you're getting into an area of work product in terms of the

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documents I've selected for the witness to review in preparation.

A. Yes, I looked at some.

Q. Had you ever seen them before yesterday?

A. No. I had asked occasionally during the course of the interviews that I conducted if someone would show me where their files were, these locked files that they keep. I specifically recall Jim Huchison unlocking the area to show me where he kept his files. I wanted to make sure that they had all been Bates stamped.

Q. Okay. But you didn't actually look at the content of the documents --

A. No.

Q. -- at that time?

So the only time you've ever actually seen any Category II documents was yesterday?

MR. NUNLEY: Objection as to form, mischaracterizes her prior testimony.

A. No, I don't think that's entirely accurate.

Q. Okay. What --

Where is it inaccurate?

A. Well I know that I saw some yesterday. I may have seen some earlier. I was involved, as I told you last March, in the review at outside counsel for

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confidentiality purposes. Occasionally it could happen that a document slipped through the process, and if so, we tried to make sure that before it was produced there was a review done at outside counsel. And so I was involved in some of those.

Q. So --

A. I also may have seen some in the course of preparing for this or other depositions.

Q. But if you saw it, it was in connection with something else as opposed to specifically looking at Category II formula documents in order to prepare yourself for this deposition other than yesterday; --

MR. NUNLEY: Objection as to form.

Q. -- correct?

MR. NUNLEY: Excuse me. Objection as to form.

A. If I follow that question properly, I think the answer is no, that I -- I actually did also while I was in flavor technology ask to see what they were talking about when they were describing the records, where they keep them.

Q. And were you shown some documents?

A. I was shown, "This is what one looks like. Here's where we keep it."

Q. Okay. Just as an example?

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A. Right.
Q. Okay. What did it look like?
A. It looked like a sheet with a lot of codes on it.
Q. Did you ask how one would go about translating those codes?
A. Not specifically. I asked a little bit about how they're used, how people know what they mean.
Q. And what were you told?
A. Generally I was told that they're used to mix up the formulas. They're used either as pre-blend concentrates or formulas to make what you might call a sauce that goes on the tobacco, the flavors or the after-cut or the casings.
Q. Do you have an understanding as to the difference between after-cut and casings?
A. I have --

MR. NUNLEY: Let me -- excuse me. Just I'm going to object to this line of questioning on this basis: The notice is specific that you wanted someone on the collection and production of Category II documents. I had put you on notice when we argued the issue of Category II that we did not read the notice as requesting someone who could interpret and explain necessarily the

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interrelationship, that we were prepared to make someone of that type available to you, but we do not read the Category II 30.02(f) as requiring that.

You -- there was no movement made by the plaintiffs to change that, so I don't believe this witness is properly required to answer this line of questioning. I'm certainly not going to stop it, but I'll put you on notice that I think it's outside and will object to any attempt by you to characterize this as 30.02(f) on the issue of the interrelationship and working of Cat II ingredient documents.

Q. Do you remember my question?

A. I'm sorry, I don't.

Q. Do you understand the difference between after-cut and casing?

A. I have a general understanding based on my personal knowledge having been at the company for some time.

Q. What's your general understanding?

A. A casing is a sauce that goes on the tobacco before it's cut, and after-cut goes on after it's cut.

Q. Are you aware of any other sauces that are used in the cigarette manufacturing process?

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MR. NUNLEY: Objection as to form. How do you mean "any other sauces"?

Q. Is something --

Is there anything besides casings or after-cuts?

A. Well there --

MR. NUNLEY: Same -- excuse me. Same line of objection to this question. Or excuse me, same objection to this line of questioning.

A. Yeah, I'm not an expert in -- in the processing. I know that there are things we call casings and after-cuts. The flavor group also works on concentrates.

Q. Is that something that's -- that's applied to cigarettes other than as a casing or as an after-cut?

MR. NUNLEY: Same objection.

A. I don't know. I -- my basic knowledge is that the concentrate is something that is sort of a pre-blend -- it's a concentrate that then can be added to, and my understanding is -- general understanding, personal knowledge only, is that it winds up as a casing or an after-cut.

Q. So in general, it's your understanding that the sauces that are used in the manufacture of cigarettes

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are either casings or after-cuts; --

MR. NUNLEY: Same --

Q. -- is that correct?

MR. NUNLEY: Excuse me. Same objection.

A. Based on my personal knowledge, that's about as much as I know about it, yes.

Q. And it's your understanding that Philip Morris has produced documents that show all the casings used in cigarettes sold in Minnesota?

A. It's my understanding that Philip Morris has produced documents sufficient to show all of the flavors used -- did I say "flavors"? Excuse me. All of the specs, all of the ingredients and all of the formula for documents sold during that time period.

MR. NUNLEY: You said -- you said "for documents."

A. I'm sorry. For cigarettes --

Q. My specific question --

A. -- sold domestically during that time period.

Q. My specific question goes to the issue of casings. Is it your testimony that Philip Morris has produced documents sufficient to show each and every casing used on cigarettes sold in Minnesota from 1954 to 1994?

A. I believe so, yes.

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Q. And what's the basis of that belief?
A. It's my understanding that that would be -- that a casing would necessarily be covered in specifications, ingredients and full formula for any of those cigarettes.
Q. I believe you told me that you had had -- was it David Williams show you an example of a -- of a flavoring document?
A. No, not David Williams.
Q. I'm sorry. Who was it?
A. Greg Nixon.
Q. And what is Mr. Nixon's title?
A. I'm sorry, I don't recall, but he's in the flavor technology group.
Q. And would it be the flavor technology group that would be responsible for the -- the casings and the after-cuts?
A. They make the flavor formulas, so basically I think they would develop the formulas there, yes.
Q. Okay. Did you do anything to determine if Philip Morris collected and produced doc -- documents sufficient to show each and every casing used on Philip Morris cigarettes sold in Minnesota?
MR. NUNLEY: Objection, asked and answered.

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A. Yeah, I -- I think a casing -- and -- and I may have overemphasized the use of the word. It's not a common term, but I think a casing is sort of a subset of this information, so it would have been included.

Q. So basically, you just asked if Philip Morris had produced all documents necessary to show the formula; is that right?

A. Well I asked each time, specifications, ingredients and formula, yes.

Q. And you didn't yourself try and find out what the different elements of the specifications, ingredients and formula would be; is that correct?

A. I didn't spend a lot of time trying to become an expert in that area, no.

Q. Okay. So you just took it on -- well strike that.

So when you sought out this information, you didn't yourself try to determine whether all the items that go into making up the formula or the ingredients for a cigarette were searched for, collected and produced; is that correct?

MR. NUNLEY: Objection, --

A. No, that's not correct.

MR. NUNLEY: -- mischaracterizes her prior testimony.

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Q. How did you go about doing that?
A. I interviewed people in each of the areas where the records would come from and I asked them about the thoroughness of the search and I asked them about the process, how they determined which would be included. And in each of those areas I was told that it was a very thorough search and that the documents that were pulled together in response to this request were sufficient to show all of that information during that time period.
Q. Okay. So it's your testimony that there are no missing pieces for the ingredients, specifications or formula?
A. By "missing pieces," what do you mean?
Q. Some gap in knowledge, something where they were not able to locate a document sufficient to demonstrate a particular ingredient or a particular casing or a particular blend formula for a particular cigarette for a given year.
MR. NUNLEY: Well objection as to form. I think it mischaracterizes our obligation. We had an obligation to produce those documents in our possession sufficient to show. I think your question suggests something else, and on that basis I'd object.

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A. So how does that question go again?
Q. You asked me to define what I meant by "missing pieces." Do you recall my definition of that?
A. It was a little wordy, but I think -- I think I do.
Q. Okay. Is it your testimony that there are no missing pieces for the specifications, ingredients and full formula?
MR. NUNLEY: Objection as to form.
A. We produced information that we had. It's possible that earlier, in earlier years, that the information was kept differently, but I don't think we've missed any information that we had. We produced everything that we had to -- that would be sufficient to disclose that.
Q. I appreciate that you produced everything that you had. What I'm trying to determine is if you'd made any effort to determine whether what you had was sufficient to show that all the specifications, ingredients and formula for all cigarettes sold in Minnesota or whether there were some missing pieces.
MR. NUNLEY: Let me make sure I understand the question. Are you saying missing pieces that Philip Morris had that it didn't produce or information that it -- documents it didn't have?

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MR. GORDON: Either.

MR. NUNLEY: Well objection as to the second -- first of all, objection as to form if it's either, but second, objection to the second part because that -- Corey, as far as I know, that assumes an obligation on a litigant that -- that no litigant bears.

MR. GORDON: Well, you know, Chip, the case management order still applies. I understand this is -- this is basically a document-collection deposition, but your objections have been way beyond the case management order. I'm trying to move this along, and I've -- and I've sat through some very lengthy prompting objections. Let's go back to the -- to the case management order.

MR. NUNLEY: Well no, let's --

MR. GORDON: Make -- make your objection as to form and --

MR. NUNLEY: Corey, first of all --

MR. GORDON: -- let's move on.

MR. NUNLEY: -- don't characterize my objections as prompting. If you're going to ask a question of the witness to put before the jury a suggestion on a litigant that the -- as an -- in terms of an obligation the litigant doesn't bear,

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then I will give you more than a simple speaking objection. I will give you the basis for the objection because I think when you do that, you're exceeding your obligations under the case management order.

BY MR. GORDON:

Q. Okay. Ms. Purcell, my question is whether you did anything to determine whether in searching for documents to pro -- to respond to the requests set forth in Exhibit 1300 Philip Morris discovered that it lacked information for a particular cigarette, for a particular year, for a particular ingredient, anything like that.

MR. NUNLEY: Objection as to form, compound.

A. I interviewed the people who would know the most about these documents. Each of them told me that it was a thorough review, that any documents that they had that were relevant were collected, and I believe that if they were responsive, they were also produced. I am aware that sometimes the form of those documents might have changed in the time period from 1954 to 1994 or the present.

Q. Okay. My question is not whether they produced everything they had, but whether you did anything to

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determine whether there was anything missing.

MR. NUNLEY: Objection as to form.

A. I'm sorry, I didn't specifically ask what was missing because we have collected everything that we had, everything that we used.

Q. So you did nothing to determine whether in this collection process Philip Morris determined that it lacked documents on a particular specification or ingredient or formula for the -- for cigarettes sold in Minnesota?

MR. NUNLEY: Same objections, and again I think that you're -- you're attempting to create an obligation that Philip Morris doesn't have.

A. Actually, Mr. Gordon, no, I wouldn't say I did nothing. I said I didn't ask that specific question. I asked the other side of it, did we review everything we had, did we try to get everything that was available that we knew of that we had that would be sufficient to disclose this information and did we make that available to counsel so that it could be produced, and the answer in each area I asked was yes.

Q. Okay. But you never asked if the information that you had actually was sufficient to demonstrate specifications, ingredients and full formula;

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correct?

MR. NUNLEY: Objection. That mischaracterizes her testimony.

A. Yeah, I may -- I may have lost it a bit on that question because I think that is what I asked, did we do what we were required to do to meet this request.

Q. I understand that you -- it's your testimony you went to these people and said, "Did we look for and produce everything we had?" and that everybody said, "Yes, yes, we produced everything we had that was responsive." That's right?

A. That's correct.

Q. Okay. My question is: Did you do anything to determine if in searching for documents any of these people determined that for whatever reason there was a gap in knowledge or a gap in the documents with respect to any of these things?

A. I'm not specifically aware of anyone telling me that there were gaps in knowledge, but that there were changes in the way the information may have been held or compiled over the years.

Q. Okay. Did you ask anyone if there were any gaps?

A. I didn't ask that specific question, no.

Q. Okay. So if, for example, for whatever reason

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the leaf blend formula for the 1959 Philip Morris Commander cigarette was not in the files, you don't know whether in searching for the leaf blend formulas it was determined that they couldn't find the 1959 Philip Morris Commander cigarette or not; --

MR. NUNLEY: Objection as to --

Q. -- is that correct?

MR. NUNLEY: Excuse me. Objection as to form.

A. I personally did not ask all of them to walk me through the entire collection and production for this -- to respond to this request, but I did each time ask anyone, "Were there any issues that you turned up with that are unresolved?" and no one mentioned that they were missing any pieces.

Q. But you didn't specifically ask them if there was any missing information?

MR. NUNLEY: Asked and answered.

A. I don't recall specifically asking that question, that's correct.

Q. So you are not capable of testifying here today whether or not Philip Morris has produced documents that in fact demonstrate all the specifications, all the ingredients and all the formulas for cigarettes sold in Minnesota?

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MR. NUNLEY: Same objection. Mr. Gordon, I think again to the extent you like to chastise me about exceeding the case management order, I think you here are exceeding your obligations as a questioning attorney to frame your questions properly. I think you're suggesting an obligation that, to my knowledge, no litigant in this case bears.

A. I think I can answer your question, Mr. Gordon, by telling you that I have checked with all of the people who were involved in that initial meeting when we received this request, all of the people who I listed for you, and each one of them has told me that they did a diligent and thorough search, that they tried their best to make sure that we had all the information we needed to respond to this request. And I was told by Cliff Lilly and by Ken Houghton that in fact looking at some of that information would give you everything you needed.

Q. You understand you're testifying here today as a spokesperson for Philip Morris; correct?

A. Yes, I do.

Q. And you understand that your obligation here is to testify as the person most knowledgable on behalf of Philip Morris with respect to its collection of

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Category II information?

A. That's correct.

Q. And you understand that in December of 1996, as set forth in Exhibit 1300, plaintiffs -- plaintiffs asked for documents sufficient to disclose all the specifications, all the ingredients and the full formula for each and every cigarette sold by Philip Morris in Minnesota from 1954 until 1994? You understand that?

A. That's correct.

Q. Okay. My question is: Did Philip Morris do that?

MR. NUNLEY: Well I'm going to renew my objection. To the -- to the extent what you're trying to do is have her explain how the documents fit together, that's one basis of the objection, and the second basis of the objection is what I've repeatedly said. You are mischaracterizing, Mr. Gordon, what our obligations were under that, and I think that's inappropriate and unfair to the witness.

MR. GORDON: Well, Chip, I -- I -- I don't want to engage in a long colloquy with you, but I'm not asking the witness whether Philip Morris did or didn't fulfill its obligations. I want to know if

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Philip Morris produced all formula information or if there are gaps.

MR. NUNLEY: That --

MR. GORDON: This is the wit -- just a minute.

This is the witness who's been produced as the most knowledgable person on the collection. I understand that she's -- her testimony is going to be over and over again that Philip Morris did everything it was supposed to do and produced everything it had. I want to know if there was anything Philip Morris didn't have. I want to know if there are any gaps, and this is the person who's been produced as the person most knowledgable.

And I don't -- I don't care how many times I have to keep asking the question. I want to know if -- if it's Philip Morris's testimony that it has given the plaintiffs each and every formula, each and every specification and each and every ingredient for each and every cigarette.

MR. NUNLEY: Corey, I think Philip Morris's obligation was to produce those documents in its possession that responded to one or two. This witness is here to tell you whether or not Philip Morris did that.

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If you're asking this witness to -- to look behind what may -- in 1958 what may have been missing, and then I don't know what you're suggesting, that we go out and then attempt to get documents when we don't have them.

MR. GORDON: No, Chip, just tell me.

MR. NUNLEY: Tell you what?

MR. GORDON: That's -- that's why we're here. I'm not -- I -- I didn't come to New York, hire a court reporter to sit here and ask the witness if Philip Morris fulfilled its obligations. That's not -- you know, I -- I -- I -- I -- I -- I'm not stupid. I'm not going to waste my time.

My question -- my whole point in -- in examining this witness and my whole point in doing a 30.02(f) examination of a witness is to find out what Philip Morris did produce and what it wasn't able to find and what it -- what it wasn't able to produce.

MR. NUNLEY: Well I --

MR. GORDON: And it's a very simple question, do -- has Philip Morris produced every -- each and every specification, each and every ingredient and each and every formula.

MR. NUNLEY: And you have -- Corey, I think you've clearly demonstrated the problem. You've not

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properly asked for a witness to testify about what you want. You've asked for a witness to testify about Category II collection and production. She's testified precisely as to that, Philip Morris's collection of those documents and production.

Now you're asking her as to the ingredient portion of it, whether this witness can look at the -- the ingredient portion that we've produced, which you know is a lot of documents, and tell you whether there is a formula missing here or there is a -- an ingredient missing there, and I think that's outside what you've asked for her to do. What she can tell you is what we did to respond to these, the collection and production of Category II. I think she's done an extremely capable and fine job of doing that so far.

To the extent you've -- you've failed to ask the appropriate -- or make the appropriate designation, I mean, you know, whether you've come to New York and hired a court reporter or not, you're the master of your designations. We raised this as an issue when we argued Category II. She's here to tell you what we did to -- to comply with -- with what you have in front of her now, which is the December 16th request.

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MR. GORDON: And I want to make it very clear on the record that our purpose in conducting this 30.02(f) deposition is not to give an opportunity for Philip Morris to embark in a self-laudatory and self-congratulatory soliloquy about all the wonderful things it did to collect documents. The sole purpose of this deposition is to find out if there's anything missing.

MR. NUNLEY: Well then if that --

MR. GORDON: And -- and -- and we noticed the person most knowledgable about the collection and production of Category II documents, and I -- I think the record is clear but I just want to make it abundantly clear that this person who has been produced in response to this 30.02(f) notice does not have any information as to whether or not there are any gaps in the documents that have been produced.

MR. NUNLEY: Corey, I think --

MR. GORDON: And I want -- just a minute, Chip.

MR. NUNLEY: Certainly.

MR. GORDON: I want to make it very clear on the record that we do not believe this complies with the 30.02(f) production. The whole point of our conducting an examination here is to determine if

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there is anything missing.

MR. NUNLEY: Well, Corey, if -- you could have asked, you could have designated or requested a designation on that topic. You haven't. You asked for a witness to testify about our collection and production, which necessarily means documents in our possession. She is here to testify about what we did to collect and produce documents in our possession.

Now you're asking this witness to convert herself into some flavor and ingredient expert and look at a production from 1954 to 1994, 40 years' worth, and tell you whether anything is missing. I think that is patently ridiculous and ludicrous.

MR. GORDON: Well, you can tell that to -- to Judge Fitzpatrick. His --

MR. NUNLEY: I'll be prepared to do exactly that.

MR. GORDON: Please let me finish.

MR. NUNLEY: I've told you before that I was prepared to sit down with you and go through Category II production. I've told the court that. You have never asked to do that, so if you're -- if you're unhappy with the witness you have here today, your unhappiness springs from your own failure to properly request a witness on the issue you wanted

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testimony.

This witness is here and able to testify about the requests that you've made, and she's done that.

MR. GORDON: And as I was trying to say before you interrupted me, Chip, it's our position that Philip Morris has not complied with the 30.02(f) notice, and we intend to seek appropriate remedies because the whole point of examining a witness most knowledgable is to determine not only what has been produced but what might not have been produced, not because of anything nefarious but because there were no documents available on a particular issue. And it's clear Philip Morris has not produced a witness who's knowledgable on that -- that aspect of the collection and production process.

BY MR. GORDON:

Q. Ms. Purcell, how were documents assembled for Bates stamp numbering?

A. Bates stamps were applied -- we're talking about Category II documents?

Q. Right, just the Category II documents.

A. Bates stamps were applied in a secured area where the documents were collected, where the copying was being done.

Q. How was it determined the order in which

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documents would be assembled and then stamped?
A. I don't think I understand the question.
Q. What's the relationship of -- of the -- of the sequence of documents, if any?
MR. NUNLEY: Objection as to form.
A. Yeah, I'm sorry, I don't understand that question.
Q. Well the documents are numbered in some sequential order; is that correct?
A. Yes, the documents are numbered Bates stamped.
Q. Who put the documents in a pile in order for them to be Bates stamped sequentially? How was that done?
A. The entire copying and Bates-stamping process was done on site for Category II documents by teams of outside counsel personnel.
Q. So the documents were collected from whatever areas they were collected from and brought into a single room; is that correct?
A. Several rooms.
Q. Okay. And how were -- were they then put in the line for Bates numbering?
A. I believe in order of production.
Q. What --
A. We were working constantly to produce

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documents. As documents became available and were ready to be go -- to put -- be put into the room where they were being worked with by counsel, I think it was a first-in system.

Q. Is it your testimony that all documents collected from a single area were sequentially numbered?

A. No, I don't know if that's accurate.

Q. Okay. Is it in fact the case that at times documents were collected from a single area but were separated and Bates numbered out of sequence?

MR. NUNLEY: Objection as to form.

A. Documents may have been Bates numbered in -- at separate time periods from a singular area.

Q. How did that come about?

A. Well I think it could come about in a number of ways, but mainly I think we were trying to meet certain requests, and it's possible that you could have documents from one area that meet one request and documents from that same area that meet a separate request.

Q. Okay. If documents were pulled at one time, is it your testimony that those documents pulled at the same time from a single area were numbered -- numbered sequentially?

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MR. NUNLEY: Objection as to form.

A. I don't think they were always necessarily done that way.

Q. Okay. Were there circumstances where documents pulled all together at the same time from a single area were separated and Bates numbered out of sequence?

A. As I said, they may have been Bates numbered separately if certain parts of the documents from that singular area were responsive to one request while others might have been responsive to another request.

Q. Is it your testimony that the Category II formula documents that have been produced by Philip Morris were intended to be responsive to different requests?

A. Well you have two here, so are we talking about just the Category II documents that respond to this, to the December 16th document requests?

Q. Well I'm -- I'm asking you about all the Category II documents that have been produced by Philip Morris. Is it your testimony that any given document was intended to be responsive to one or another of a specific request as opposed to this document is responsive to the Category II formula

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requests in total?

MR. NUNLEY: Objection as to form.

A. I'm sorry, I didn't understand that question at all.

Q. Okay. You understood in the non-Category II production that documents were collected and produced pursuant to specific requests; correct?

A. That's correct.

Q. For example, a particular document might have been responsive to, say, Request Number 72, and in the 4A index it would say, "This is responsive to Request Number 72"; is that correct?

A. Okay.

Q. Okay. Is it --

Is that the same with Category II; in other words, all the documents that were produced by Philip Morris, the index should re -- should indicate which specific requests they were being produced to?

A. As far as I know, there was an index that was followed the same way as the general production, yes.

Q. And is it your testimony that that index indicates which of the specific requests it was being responsive to?

A. As far as I know, yes.

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Q. Okay. So you don't know -- strike that.

If I were to tell you then that all the Category II documents were simply produced as formula documents re -- responsive to all of the formula requests, that would -- that would be inconsistent with your understanding; is that correct?

MR. NUNLEY: Objection as to form. I don't know what you mean by that question.

A. I'm sorry, I don't know what you mean by that question either. Could we try it again?

Q. Philip Morris has produced several hundred thousand pages of Category II documents; is that correct?

A. I recall a number at about 60,000.

Q. I'm sorry, that's right. I'm thinking of all the defendants.

So Philip Morris has produced something on the order of 60,000 pages of Category II documents; is that correct?

A. That's about right.

Q. Okay. And it's your testimony, it's your understanding that Philip Morris in producing those has intended to segregate out which of those documents were responsive to specific requests as opposed to simply producing 60,000 documents and

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saying, "Here, these are the formula documents"?

A. I believe that there --

MR. NUNLEY: Objection as to form. Excuse me, Ms. Purcell.

A. I believe that there were some requests earlier, before December 16th, that would have turned up documents that were Category II documents, so in order to respond to those requests and to respond to the December 16th requests, we may have -- they may be -- may have been done at slightly different time periods. So to go back to your numbering and designating, they may be done slightly differently.

Q. What was done to respond to the September 4 court order?

MR. NUNLEY: September 4, 1997?

MR. GORDON: Right.

A. Well we did a number of things. There's still work ongoing. Without it in front of me, I may not remember all of them and I'm sure I won't remember all of it. Would you like -- like me to try to remember what we were asked to do in that order, or do you have a copy?

Q. I'd like you to tell me everything that Philip Morris has done to respond to the September 4, 1997 court order.

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MR. NUNLEY: Could you put the order in front of her so she won't have to go by memory as to what we're required to do?

MR. GORDON: I don't have it, but if you want -- you --

Q. Do you recall the September 4 order that came out 19 days ago?

A. I recall the order. I may not remember everything that's asked for in it. I can try from memory to tell you what I know was in it. Would you like me to do that?

Q. Sure.

A. Okay.

MR. NUNLEY: Well objection. I mean, I think it's something you ought to put in front of the witness, but as long as the record's clear she's doing it from memory and not -- without the document in front of her, she can do that.

A. Okay. Well as I said, I know that there's been a lot of work ongoing with people in the company and outside counsel since -- and in-house counsel since that order came in, so I may not be aware of everything that's currently going on. I know that that order requested information on any ingredient lists as well as work-product files; that is

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information that we produced to you yesterday.

I know that it requested information on a computer model. I believe that work compiling that information is ongoing and will be produced. I believe it requested information on files from INBIFO, and I know that we have identified those files.

Q. I -- I'm going to stop you there because there were a number of other issues that go beyond the Category II issues, and I specifically want to focus on the ingredient lists, the work-product and the computer model issues. Tell me everything Philip Morris has done to find ingredient lists, work product or computer models.

A. Well as I said, I may not know everything, but I can -- I do know that the ingredient lists by and large would be held in David Williams' area, that David Williams was involved in a project that was work product that involved ingredient lists or information on ingredients. All of that information has been compiled. I know that there were outside counsel teams in David's office in the past few weeks going through everything that he had, checking on the work-product information as well as any ingredient lists that might have been reviewed before and that

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that information was compiled and delivered to you yesterday.

Q. What was the project David Williams was working on?

A. I know of it as something called the Brand History Project.

Q. When was that project begun?

A. I don't know exactly when.

MR. NUNLEY: Objection, foundation.

A. I'm sorry, I don't know when it was begun, but it is still, as far as I know, in development.

Q. Have --

Has brand history of any specific brand been completed?

A. I don't know if it's been completed. I know that the system is still in development and that they don't rely on it yet for anything.

Q. Why was the Brand History Project undertaken?

MR. NUNLEY: Objection, foundation and calls for attorney-client, work-product information.

THE WITNESS: Do I answer that one?

MR. NUNLEY: Can you answer it without revealing anything you may have been told by counsel?

THE WITNESS: Yes.

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A. It's my understanding that that was a project which was begun at the request of in-house counsel.

Q. Does any --

Does Philip Morris maintain any of its formula information on computers?

A. Well when you say "any of its formula information," and there is some that's available on computers.

Q. What was done, if anything, to access the information stored on computers in order to respond to plaintiffs' requests?

MR. NUNLEY: Let me -- let me just raise a question here, Mr. Gordon, so the record is clear because I think it will be unilateral. Is it your position that Philip Morris has an obligation to pull off from computer files documents that are not printed to hard copy?

MR. GORDON: I'm not prepared to discuss whether Philip Morris does or does not have that obligation. I'm just here to find out what Philip Morris did.

MR. NUNLEY: Well, I will tell you if you -- if you go into this line of questioning, we'll intend to do the same if we need to pull back your witnesses to do exactly the same to find out if this

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type of inquiry has been done by the State and by Blue Cross and Blue Shield.

MR. GORDON: I -- I -- I don't know what you did or didn't do when you examined document-collection witnesses, but I'm certain that you could have asked them whether they did that or not.

MR. NUNLEY: Well you're familiar with -- with electronic records and exclusions as to those, and if you want to broach the topic here, you can do that, but I just want to put you on notice we'll ask for the opportunity to do the same with your witnesses even if we need to pull them back.

MR. GORDON: Well, Chip, your -- your -- you've spent a lot of time talking here about obligations and duty. I'm just trying to find out from this witness, who's supposedly the most knowledgable about what Philip Morris did to produce documents, I'm just trying to find out what Philip Morris did or did not do.

MR. NUNLEY: I --

MR. GORDON: And I -- and I assume your people were competent and able to ask those same questions of our witnesses, and if you forgot to ask them what they did or didn't do with respect to

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computer compilation, that's your problem.

MR. NUNLEY: Well if -- Corey, if you're taking the position that it's always been an open issue, I want to make -- I want that position taken by you to be clear on the record, that it was an open issue and that our -- if our people didn't go into it, it was because they simply, I think you said, forgot and not because we had some sort of an agreement.

But if that's -- if that's your position, that's fine, but realize it's reciprocal. As certainly you and Ms. Walburn like to tell me in taking depositions, as you did during Channing Robertson, I'm telling you now this will be reciprocal.

MR. GORDON: Okay. And I've made -- I've tried to make it clear, and if I didn't, now let me make it very clear that I'm not taking any position as to whether either side has any obligation to do or not do anything with respect to any aspect of document collection or production. That is not my purpose in conducting this examination.

Whether Philip Morris, you know, went to -- took out full-page ads in -- in newspapers in Brazil to find formula, ingredients and specifications, obviously Philip Morris would have no obligation to

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do that, but if Philip Morris did that, I'm entitled to find that out. So that's my purpose in conducting an examination, to find out what Philip Morris did or didn't do.

MR. NUNLEY: Well --

MR. GORDON: And you can't infer from that that we are taking a position one way or the other as to whether Philip Morris should have or should not have done anything.

MR. NUNLEY: Well, Corey, --

MR. GORDON: I simply want to find out what Philip Morris did.

MR. NUNLEY: -- several times during Channing Robertson's deposition you told me, prompted by Mr. Wilson, that if I asked a certain line of questions, that you wanted me to know that we would be in essence opening the door there for mutual inquiry. I'm just telling you the same thing. If you do it here, I'm putting you on notice that you're opening the door for mutual inquiry.

MR. GORDON: If you have any 30.02(f) depositions of our people that you haven't yet taken and you want to conduct a similar line of inquiry, you're certainly free to do so.

MR. NUNLEY: No, I -- Corey, that's a --

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that's a nice attempted dodge, and let the record reflect that Mr. Gordon is smiling like the cat that swallowed the canary here thinking that his 30.2 -- 30.02(f) depositions are over and now that we've basically conducted ourselves in a way consistent with certain agreements, that they can now breach it and there will be no way for us to in essence take advantage of the door being opened.

I want to put you on notice that if you do this, we'll go to the court and ask for leave to bring back your 30.02(f) witnesses and go into this same line of inquiry.

MR. GORDON: Well you're certainly free to go to the court and ask for whatever you want to ask.

MR. NUNLEY: Good.

BY MR. GORDON:

Q. Do you remember the question?

A. No, I'm sorry, I don't.

Q. What was done, if anything, to accept -- to access the information stored on computers in order to respond to plaintiffs' requests?

A. As I mentioned to you last March, in each one of the interviews based on the scope statement, counsel discussed records broadly with all of the employees

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and covered to the degree necessary what was available on computers, whether they printed it out, where they kept their records.

Q. Okay. Were any documents produced in this litigation printed from a computer database?

MR. NUNLEY: Objection. You need to be more precise as to that question. You mean at any time, at what -- when printed?

MR. GORDON: Start with anytime.

A. Well, Mr. Gordon, this is 1997. Most information generally is on some kind of a computer, whether it's a word processor or not, so I'm not sure what you're looking for. You're looking for specific databases?

Q. Well were there specific databases that contained formula, ingredients or specification information?

A. There are some, yes.

Q. Okay. And were any of these databases accessed for purposes of producing documents responsive to plaintiffs' request?

A. They were reviewed. They were reviewed with counsel. I'm not sure what you mean by "accessed." Most of those systems print reports or worksheets or information, and that information was reviewed and

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collected, and if responsive, it was produced.
Q. How were the databases themselves reviewed?
A. With the people most knowledgable about those databases, with the IS departments and with counsel.
Q. Were any documents printed out from any databases in order to respond to plaintiffs' requests, any of plaintiffs' requests?
A. The documents that you received yesterday, the full stack of documents were printed out. I know that they were. I don't know if there is any other specific production that we made of any existing database records beyond that.
Q. Who made the determination as to what -- as to the manner in which documents would be printed out from the databases?
MR. NUNLEY: Objection as to form and to the extent it calls for attorney client or work product. Can you be more specific about your question?
MR. GORDON: No. I just want to know who made the decision.
A. I'm sorry, I don't -- I don't know which decision you mean.
Q. You just told me that certain documents were printed out in the stack that we received yesterday,

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and I want to know who made the decision which documents to print out from which databases and how to print them out.

A. I don't know. I believe that like most other decisions would have been made with counsel and the employees who were knowledgable about the information.

Q. Did you do anything to find out?

A. On the specific stack you received yesterday, no.

Q. Yeah. Okay. So you don't know who made the decision as to how to print out the information that was produced yesterday?

A. Nothing specific. It's been our general practice in litigation matters to consult with counsel and employees in the company.

Q. Philip Morris uses flavors provided by third-party vendors; correct?

A. Yes, we do.

Q. And those flavors are made up of various chemical compounds; correct?

A. They're made up of ingredients, yes.

Q. And has Philip Morris produced complete ingredients for each and every flavor which Philip Morris has obtained from a third-party vendor and

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used in cigarettes sold in Minnesota?

A. I think we --

MR. NUNLEY: Objection for the same reasons I've stated before.

A. I think, Mr. Gordon, that this is pretty much the same question you were asking about the December 16th request. We have produced everything that we had sufficient to answer that request on ingredients.

Q. So and you don't know whether Philip Morris has complete formula information for all flavors from third-party flavor suppliers?

A. I'm sorry, I'm mixing terms a little bit here. Formula information from --

Q. In the cigarette industry, the outside third-party flavor suppliers are -- are called flavor houses; correct?

A. Sometimes, yes.

Q. And they have proprietary flavor ingredients that they sell to cigarette manufacturers; correct?

MR. NUNLEY: I'm going to object to this line of questioning. I think it's clearly outside this witness's 30.02(f) obligations. She can -- she can give you testimony, but it's not on behalf of Philip Morris in her 30.02(f) capacity.

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A. I'm sorry, we're waiting for me now?
Q. Right.
A. What was the question?
Q. These flavor houses have proprietary flavor formulas for the ingredients they sell to cigarette manufacturers; correct?
A. It's my understanding that yes, they do.
Q. And the --
For example, a flavor house might sell a flavor called Tobacco Flavor Number XYZ; correct?
MR. NUNLEY: Objection as to form.
A. It's my understanding that sometimes flavors are coded and that they include ingredients and that the information of what ingredients are in those flavors would be available to the vendors who sell us those in -- those flavors, yes.
Q. And my question is: Does Philip Morris have sufficient information to know each and every ingredient in every flavor that it obtained from a third-party flavor house and used in cigarettes sold in Minnesota?
MR. NUNLEY: Objection, clearly beyond the scope of the 30.02(f) designation.
THE WITNESS: But I answer it?
MR. NUNLEY: Sure.

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A. Well based on my personal knowledge, I'm aware that over the years the requirements that we may have placed on our vendors as to what it is we needed from them have changed, and currently we receive very detailed information about ingredients, but earlier that information may not as -- may not have been available in the same format.

Q. So going beyond your personal knowledge, I want your testimony on behalf of Philip Morris. Is it your testimony that in responding to plaintiffs' requests for all specifications, ingredients, full formula for cigarettes, Philip Morris has or has not produced documents sufficient to show the proprietary formulas for the third-party flavor-house ingredients used in all cigarettes sold in Minnesota?

MR. NUNLEY: Objection, asked and answered.

A. It's my understanding that we have produced all of the information we had available to us to meet our obligations for that request.

Q. Right. And my question is: Does that information demonstrate each and every ingredient in each and every flavor-house formula used in cigarettes sold in Minnesota from 1954 to 1994?

MR. NUNLEY: Mr. Gordon, I'm not going to

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go through my position on this line of questioning, but I think you know that it's clear, and I object because I think you -- your question assumes an obligation that Philip Morris does not have and it assumes an area of inquiry that you've not asked for.

Q. Do you remember the question?

A. No, I'm sorry, I don't.

Q. Does the information provided by Philip Morris in response to plaintiffs' requests set forth in Exhibit 1300 demonstrate each and every ingredient in each and every flavor-house formula used in cigarettes sold in Minnesota from 1954 to 1994?

MR. NUNLEY: Same objections.

A. It's my understanding that the information provided by Philip Morris in response to your request on ingredient and formula information is everything that we had, documents sufficient to show what we had available to us, what documents we have.

Q. Is that information complete?

A. As far as I know, it's complete by way of what we have.

Q. Is it complete in terms of what you used in the cigarettes that you sold to Minnesotans?

MR. NUNLEY: Same objection. What was that

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last word?

MR. GORDON: "Minnesotans."

MR. NUNLEY: Thank you.

A. I'm sorry, I don't understand that.

Q. I -- I understand it's your testimony you've produced everything you had. Does everything you have show what you used in every cigarette you sold in Minnesota?

MR. NUNLEY: Mr. Gordon, there's no reason to raise your voice here.

MR. GORDON: I'm not raising my voice --

MR. NUNLEY: Well --

MR. GORDON: -- and the videotape is very clear about that.

MR. NUNLEY: Yeah, it will be clear. But the -- again you're exceeding what you've noticed in your 30.02(f).

A. I'm sorry, Mr. Gordon, I'm -- I'm trying to be clear with you. It's my understanding that the format of the information that we received on ingredients over the years changed. The format we had it in and kept it in and maintained it in has been provided to you.

Q. Okay. And there are periods --

There were periods of time when Philip Morris

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obtained flavor-house ingredients for which it did not know the precise formula; correct?
A. I don't know if that's accurate.
Q. Who would know?
A. Well I would rely on our in-house scientists if I had a question like that --
Q. And --
A. -- but --
Q. And in preparing for this deposition, you didn't ask them that; correct?
A. I asked them if we made available everything we needed to to give you sufficient documents to understand the ingredients, formulas, specifications for that time period.
Q. And with respect to the flavor-house ingredients, you have no idea one way or the other whether the information Philip Morris has in its possession is complete; correct?
MR. NUNLEY: Objection as to form.
A. I'm sorry, I still don't understand your -- your concept of complete. You have what we had.
Q. And is what you have complete?
A. Complete for what purposes?
MR. NUNLEY: Same objection.
A. What do you mean by "complete"?

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Q. You --

Should we get a dictionary?

A. No, I don't think I need a dictionary to understand the word "complete." I just don't -- I don't understand how you're using it because I've told you everything that we had was reviewed, and we've produced what we had, documents sufficient to show. I've also told you that the format of those documents changed over time.

Q. I'm satisfied that the jury will understand what I'm asking you.

MR. NUNLEY: Good. Let's move on to another question then.

Q. And I'm satisfied, Ms. Purcell, that the jury will understand what it is you're trying to avoid answering.

MR. NUNLEY: Objection, move to strike --

Q. The question --

MR. NUNLEY: Excuse me. Objection, move to strike the colloquy of counsel.

Q. The question I am asking you is: Is the information in the possession of Philip Morris complete and sufficient to demonstrate each and every chemical that was used in each and every flavor-house ingredient used in cigarettes sold to Minnesotans?

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MR. NUNLEY: Same series of objections, exceeds the scope of the 32 -- 30.02(f).

A. I'm sorry, I'm not an expert on ingredients and chemicals, Mr. Gordon, but I know that we did a thorough review and a complete production of everything that we had that would respond to your requests.

Q. And whether what you had is sufficient to show each and every chemical, you just don't know; right?

MR. NUNLEY: Objection. Again you're asking a -- this witness a question outside her 30.02(f) obligations. You can answer.

A. I don't know, Mr. Gordon.

Q. Okay. From time to time Philip Morris has changed its formulas for its cigarettes; correct?

A. I believe so, yes.

Q. And when it changes a formula, it does so for a specific reason; correct?

MR. NUNLEY: Now, Mr. -- Mr. Gordon, this is clearly outside collection and production of a 30.0 -- 30.02(f) notice about collection and production of Category II documents. You're asking this witness now questions about its formula and ingredient process.

Q. Do you remember the question?

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A. No, I'm sorry, I don't.
Q. When Philip Morris changes a formula, it does so for a specific reason; right?
A. I don't know why it changes formulas. I don't know all the reasons it might change formulas.
Q. Is it your understanding that formulas might change just out of serendipity?
MR. NUNLEY: Objection, outside the witness's area of responsibility as a 30.02(f) deponent.
A. I don't normally speculate on why it is the company changes formulas.
Q. Did Philip Morris do anything to search for documents that would discuss or describe the reasons or rationale behind any formula changes?
A. If those documents were generally within scope, they were searched for and identified.
Q. Were they produced?
A. If they were responsive, they were produced.
Q. Is it your --
Well were any produced?
MR. NUNLEY: Were any what --
Q. Were any determined to be responsive and produced?
MR. NUNLEY: Well, Mr. Gordon, are you

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suggesting that documents you just described are responsive to numbers one and two of your December 16th, '94 -- or excuse me, December 16th, '96?

MR. GORDON: No, and to the extent I may have been -- you may have been focusing on that, I -- I -- I want to clear up the confusion.

Q. I'm talking about documents -- all the documents requests that plaintiffs have served in this case, including those that relate to design changes and specifications relating to such things as nicotine and -- and -- and tar and the nicotine-to-tar ratio and things like that.

My question is: In collecting documents related to formulas, were -- did Philip Morris search for and produce documents related to the rationale for any formula changes?

MR. NUNLEY: Objection as to form, asked and answered.

A. I'm sorry, Mr. Gordon, it's been a long case and there were a whole lot of separate requests involved. I can't tell you specifically what documents were produced to respond to which requests.

Q. Well, it's my understanding that Philip Morris

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believes its formula information to be trade secret. Correct?

A. I think that's accurate, yes.

Q. So if there was a document describing an existing formula and a -- and a reason to change it to a different formula, that could potentially disclose competitive trade-secret information; correct?

A. I believe it could.

Q. And that would be considered Category II information where if it were responsive to any request; correct?

A. That sounds accurate.

Q. And my -- my question is: In collecting --

In collecting and producing Category II information, did Philip Morris search for documents that did what I just described; in other words, discuss existing formulas and reasons for changing them to a different formula?

A. I believe we would have identified any documents that discussed formulas. I don't know if they were particularly responsive to your requests, but if they were responsive, they were produced.

Q. Were any produced as Category II documents?

A. I don't know.

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Q. So in conducting your research to speak -- to speak as the person most knowledgable on behalf of Philip Morris as to not only Philip Morris's collection of Category II documents but also its production of Category II documents, you did not determine whether Philip Morris produced any documents that described formula changes; is that correct?

MR. NUNLEY: Objection as to form.

A. I know only that we produced documents responsive to your requests, Mr. Gordon. I don't interpret what types of documents fall within that category of production.

Q. Did Philip Morris --

Has Philip Morris ever purchased reconstituted tobacco from a third-party vendor?

A. I don't know.

Q. Did you do anything to determine whether Philip Morris searched for or produced any documents related to formula for reconstituted tobacco purchased from third-party vendors?

A. I personally did not raise that question with anyone that I spoke to.

Q. Okay. And so you wouldn't know whether Philip Morris did or did not?

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A. Well if the topic -- if there were records available in the areas within Philip Morris when we were doing our search, we would have identified them; and if they were within scope or relevant, we would have collected them; and if they were responsive, we would have produced them.

MR. GORDON: Okay. At this point I want to ask a couple of specific questions about some Category II documents, and pursuant to agreement, I think we have to take a break to let the court reporter change and exclude people from the room that need to be excluded.

MR. NUNLEY: Well this --

MR. GORDON: It shouldn't -- it shouldn't be more than about five, ten minutes of questions.

MR. NUNLEY: Does this signal a change? You told me at the beginning of this deposition you did not intend to do Category II documents.

MR. GORDON: No, I didn't. I told you I thought --

MR. NUNLEY: You told me with Houghton you would, with this witness you would not.

MR. GORDON: No, I said I expected to use one or two documents with this witness very briefly at the end.

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MR. NUNLEY: All right. I don't think we need to go off the record. Let's just -- people who are not supposed to be in here for Cat II, which I think includes Washington, and I would ask that the Lorillard attorney leave also. We can just finish because we are on a tight schedule.

MR. GORDON: Well before we go, first of all, it's my -- my understanding that the attorneys don't have to leave for Category II documents, but --

MR. NUNLEY: Well, is this a fight you want to pick with me as to the Lorillard attorney?

MR. GORDON: No, I just -- I just wanted -- well Lorillard is represented by Shook, Hardy & Bacon. I just note the irony of you asking to exclude them from knowledge about Philip Morris's formulas, but --

MR. ROSTON: Just for the record, I'm from Doherty Rumble & Butler, not Shook Hardy.

MR. GORDON: Right, but --

MR. NUNLEY: Excuse us. You might make an effort to learn your colleagues before the deposition.

MR. GORDON: Okay. But the point is we need -- my understanding is we need to give the court reporter an opportunity to change tapes so that there

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is a separate Category II tape and transcript.

MR. NUNLEY: Fine.

THE REPORTER: Off the record, please.

(Discussion off the stenographic record.)

(Category II deposition commenced and will be bound under separate cover labeled "Volume I-A.")

(Recess taken.)

(Witness sworn.)

MR. NUNLEY: Mr. Gordon, as I mentioned before we went on the record, I had something I wanted to say.

In your questioning of Ms. Purcell, you asked her -- I don't have a line reference -- some question or a question concerning leaf blend information, and I think you asked her whether that -- those documents had been produced and I told you at the time that there was a letter on that and I wanted to remind you and also to put on the record that I think that involves the 900-and-some-thousand pages, if that's the accurate number -- and I may be misremembering -- of leaf blend information that was made available to you in exemplar form and that you looked at and -- and indicated to us that you were not interested in having it produced.

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KENNETH S. HOUGHTON

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. GORDON:

Q. Could you state your full name for the record, please.

A. My name is Kenneth S. Houghton.

Q. And you're --

You have a Ph.D.; is that correct?

A. Yes, sir.

Q. Dr. Houghton, it's my understanding you are recently retired from Philip Morris.

A. Yes, sir.

Q. When did you retire?

A. October 1st, 1996.

Q. What was your position at the time of your retirement?

A. My title was senior vice president, research and development.

Q. How long had you held that title?

A. I'd held the title of senior vice president for about I think maybe four years or so. Prior to that, my title was vice president of research and

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development.

Q. And how long had you held that title?

A. Since January 1st, 1986.

Q. So about six years?

A. I believe that's correct, yeah.

Q. How long had you been employed in total with Philip Morris?

A. I think I joined Philip Morris August 15th, 1970, so that would have been about 26 years in total.

Q. What was your first position with Philip Morris?

A. I think it was technical director for the Lightfoot Company, a division of Philip Morris Consumer Products.

Q. When did you switch over to cigarettes?

A. January '74 I transferred from Hoboken to Richmond as part of the start-up team for the blend -- the refined leaf plant.

Q. Is that the Park 500 plant?

A. Yes, that's what it's called today.

Q. So from 1974 to 1996, you were involved in Philip Morris cigarette research and development; is that correct?

A. No. I was in manufacturing from '74 through

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1983. In April of '83 I transferred to Europe as the director of R&D for Europe, Middle East and Africa, and that was when I basically started doing work in a research/development technical services area.

Q. You returned to the U.S. in '86?

A. Correct.

Q. What's your Ph.D. in?

A. Organic chemistry.

Q. Prior to your work at Philip Morris, had you done any work in the cigarette industry?

A. No.

Q. So your cigarette work is confined basically from 1974 to 1980 -- 1996; correct?

A. Correct.

Q. You're not currently working in the cigarette industry?

A. I presently have a -- an agreement where -- with Philip Morris where I'm receiving a partial salary, but I am not actively working in the industry.

Q. Are you doing consulting work with Philip Morris?

A. If -- as part of the agreement, if they ask me to do something, I'll do it, but it's not that I get paid a consulting fee for doing it as such.

Q. It's my understanding that you are here today to

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speak on behalf of Philip Morris with respect to cigarette design and manufacturing. Is that correct?

A. That's correct.

Q. But it's also my understanding that you're not the spokesman for Philip Morris with respect -- with respect to nicotine control and other reinforcing substances; is that right?

MR. NUNLEY: Let --

MR. GORDON: I'll -- that's fine.

MR. NUNLEY: Okay.

MR. GORDON: I'll -- I'll take Mr. Nunley.

MR. NUNLEY: What Dr. Houghton is prepared to testify on is the control of nicotine and other reinforcing substances in the manufacture of cigarettes, the design and manufacture of cigarettes concerning the same. Now as I told you, I anticipate you may have some questions about nicotine manipulation via chemical compounds, and that portion, to the extent that's included in number five, Dr. Ellis is prepared to testify about.

Q. Okay. I -- I'm a little confused as to the clear lines of demarcation and -- and -- and maybe you are, too, and if we hit an area where you're not prepared to testify as the person most -- most

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knowledgeable at Philip Morris, you'll let me know.

A. Okay.

Q. Okay?

A. Thanks.

Q. And your successor was -- is -- is Dr. Cathy Ellis; right?

A. That is correct.

Q. And she's going to be testifying later this week on whatever issues you're not going to testify on?

A. I -- I believe so.

Q. Okay. In --

In the design and -- and manufacture of cigarettes, it is possible to control the level of nicotine, is it not?

A. It is possible to control the level of nicotine, and we did so in products such as the denic where we actually controlled how much nicotine remained in the tobacco after the extraction. In general, what we do is we control for the tar delivery of the cigarette. The denic was an exception.

Q. Okay. And in the case of the denic, you were able to extract virtually all of the nicotine; is that correct?

A. The -- the specification called for removal of 97 percent of the nicotine, and in reality we -- on

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occasions we may have been able to get as much as 98 percent out, but we were never able to get a hundred percent out.

Q. And the denic cigarette was actually marketed for a period of time; correct?

A. It was marketed in several different configurations, anywhere from 4 to 11 milligram, regular, menthol, king size, hundreds, under different trademarks in different marketplaces, and I think that that took over three years, the different trademark tests that we had.

Q. Okay. And in all those various configurations, the menthol and the -- the different lengths and -- that you've just described, the level of denicotinization would have been approximately 97, 98 percent; correct?

A. Correct. That's how -- that's how much was removed from the tobacco.

Q. Okay. And none of those products were commercially successful; correct?

A. Well, they were not commercially successful --

MR. NUNLEY: Let -- let me just --

THE WITNESS: Yeah.

MR. NUNLEY: Corey, I'm not going to stop him on this question, but I think it's outside the

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30.02(f) designation of number five. Even as we've carved it up, I don't think it's included at all within number five, but he can answer, but my objection is he's not answering this question on behalf of Philip Morris. He is answering it in a personal capacity.

A. Okay?

Q. Were you done with your answer?

A. No.

Q. Okay. Go back to it, --

A. I mean --

Q. -- please.

A. -- basically the cigarette went into different test markets, and depending upon the marketing program and -- and the product, et cetera, and the marketplace, it -- it may have been able to capture a couple of two-, three-, four-tenths depending upon the amount of time it was in the test market. In order to -- to launch that kind of a product on a national basis, the costs of doing that kind of launching, a decision was made that it was not successful enough to really justify that kind of expense.

Q. All of the commercial cigarettes sold by Philip Morris other than those test-market denicotinized

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cigarettes that you just talked about then contained nicotine; correct?

A. Yes.

Q. Okay.

A. Uh-huh.

Q. And you mentioned, I believe, something called tar; correct?

A. Yes.

Q. Okay. It's possible to adjust the ratio of nicotine to tar in a cigarette; correct?

MR. NUNLEY: Objection as to form.

A. Is it possible to do that? Yes, it would be technically possible to do it.

Q. What are the ways that it can be done technically?

A. One of the things you could do is -- is denicotinize the tobacco. This would significantly change the -- the ratio of tar to nicotine in the smoke. Theoretically if you wanted to, you could buy nicotine and add it.

Outside of that, to make radical changes, I don't know how you would make radical changes in a tar-to-nicotine ratio. You could have some effect, possibly up to 10 or 15 percent effect, in the overall delivery of tar or nicotine based upon blend

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selection.

If you increase the -- significantly increase the -- the amount of recon in a blend, you might reduce by some 10 percent or so in a ballpark the nicotine delivered by that cigarette.

Q. Could you explain to the jury what you mean by "recon."

A. Reconstituted tobacco is a type of tobacco material that is made from pieces of the tobacco plant purchased by -- by the tobacco companies that is not necessarily in a form that makes it readily usable in the manufacturing of cigarettes, so processes have been developed which take these unusable pieces of material such as stem, which is the hard part of the tobacco leaf, the mid-part of the leaf, small pieces of lamina that break off, dust that's generated during processing, et cetera, and all of these materials can be converted using different processes into a form similar to a sheet of paper, say, that could then be utilized in that physical form to be blended back in with other tobaccos to make cigarette filler.

Q. And in the reconstitution process, you extract all of the nicotine from the -- this filler material during processing and then put some of it back in;

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correct?

MR. NUNLEY: Well objection. I think we need to be specific as to which reconstitution process we're talking about.

A. That's not exactly correct, what you're saying there. And -- and Mr. Nunley has a point. There are different processes. There are different processes Philip Morris uses. There are different processes that -- that can be used by other companies.

So you -- in talking about a process, I think you have to -- you have to know exactly which one you want to talk about, and I'm not sure.

Q. Let's talk --

Tell me the different processes that Philip Morris uses and has used.

A. And has used. If you go back to the '50s, Philip Morris used a process that I believe was originally developed by AMF; American Machinery and Foundry I think was the name of the company. And it was what is referred to as a sandwich sheet. And there you -- you had one layer of fine tobacco material. On top of that layer of fine tobacco material was placed a second layer of a binding or adhesive material. Then on top of that was a third layer of tobacco, and then you -- you tried to make a

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sheet by binding the two layers of tobacco with this binding agent. So that was one process that was used back in the '50s, maybe early '60s, the AMF process.

Then as time went on, the -- Philip Morris improved upon that process through the use of a different type of binding agent to hold the layers together, and that process is referred to as BL, which I -- I believe meant blended leaf at the -- at that time. Then in the late '60s a further refinement of that kind of process was developed by Philip Morris, and that -- that's a process that instead of taking an external adhesive material, it utilized the naturally occurring pectin that's in the tobacco and through a processing methodology solubilized that pectin, and it was used to hold the little pieces together, the little pieces of tobacco dust, and a sheet made out of that. That's the RCB process, as it's referred to today.

Q. What does "RCB" stand for?

A. I think -- I think it's "reconstituted cigarette blend" is what the -- the letters refer to as I -- was explained to me some time ago.

Now, in the '70s Philip Morris started to use a second process for -- for making reconstituted tobacco, and that process is often described as the

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Schweitzer process. And what it does is it uses papermaking technology, which produces the sheet using physical -- physical properties of the fiber to form a sheet instead of using chemical properties of -- of an adhesive like pectin to hold the pieces together.

Q. Is that called RL?

A. That -- that is referred to as RL, yes, sir.

Q. Is the BL or the RCB known as a band cast process?

MR. NUNLEY: Objection. Known by whom?

MR. GORDON: Anybody.

A. I --

MR. NUNLEY: Objection, foundation.

A. I have never heard it used, that term used, to -- to refer to BL. I've heard people call it a cast leaf kind of process, but I've never heard band leaf. Is that what you --

Q. Band cast.

A. Band cast. I've never heard that term used to describe it.

Q. Okay. We were talking about the different ways one could alter the nicotine-to-tar ratio, and we stopped when you talked -- when you mentioned using the amount of recon to clarify what recon is. Were

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you done or are -- or are there any other ways that -- that can be used to alter the nicotine-to-tar ratio?

A. I -- I think I might have to ask to go back to what --

Q. Sure.

A. -- what I was saying at that time. Okay?

Q. Well according -- according to my notes -- and -- and certainly correct me if I'm wrong, but one way was to denicotinize tobacco. Another way would be to add nicotine to tobacco. A third way would be through blend selection, and a fourth way would be the amount of recon.

A. Well, what I said is through blending, you might be able to affect the ratio some smaller amount, maybe 10, 15 percent, just off the top of my head, and one of the ways you could do that is if you put a lot of recon in, into the blend, which is part of those blend thing, but it wasn't separate. It was an example of putting a lot of recon into the blend instead of, say, a flue-cured tobacco strip or a burley tobacco strip. Then you would be putting in a material that's extremely low in nicotine content as compared to, say, U.S. flue-cured or U.S. burley tobaccos grown here.

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Q. Okay.
A. So from that point of view, you might be able to -- to affect the -- the nicotine level somewhat while holding the tar level constant. You might be able to do that.
Q. Are there other ways to affect the nicotine/tar ratio?
A. There -- there may have been. I -- people may have researched other things, but off the top of my head, I'm -- I'm not coming up with any -- any new ideas.
Q. Okay. Let me ask you then about some specifics.

Can changing the physical characteristics of the cigarette affect in any way the nicotine/tar ratio? By that I mean things like the length, the circumference, ventilation, density of packing of the material. Any of those kind of physical characteristics have any impact on nicotine- --

MR. NUNLEY: Let me --

Q. -- to-tar ratio?

MR. NUNLEY: Let me ask one question, Mr. Gordon. Are you intending to limit, for example, that question to commercial parameters or are you saying without respect to any commercial parameters

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is it theoretically possible?

MR. GORDON: At this point as is it theoretically possible.

MR. NUNLEY: Well I -- okay.

A. Ask the question again now, not just theoretically possible. I got lost, I'm sorry.

Q. Are there any physical characteristics of a cigarette that can be modified in such a way as to affect the nicotine-to-tar ratio?

A. You can have some effect on nicotine -- on tar-to-nicotine ratio, okay, which is the way I think about it anyhow.

Q. Okay.

A. On the tar-to-nicotine ratio through the construction of the cigarette. For instance, a Marlboro Red has a 14-and-a-half, 15 tar-to-nicotine ratio. Using the same tobacco, you make Marlboro Lights. That ratio is now 12 and a half to 1 if you just divide it. You have not changed the -- the tobacco. You've not changed -- not changed cigarette paper, et cetera, the flavors, but what you have done is you've changed the filter significantly. You've lengthened the filter. You made the filter more efficient, but more than anything else, you've more than doubled the amount of ventilation used in -- in

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taking that cigarette from 16 milligrams down to 11.

So based upon that, it is apparent as -- as you change the filtration and especially with that increase in ventilation associated with bringing the tar delivery down, it does have an effect on the tar-to-nicotine ratio.

Q. So simply by changing the physical characteristics; in this case, the filter and ventilation, you can take the same tobacco in Marlboro Reds and turn it into a Marlboro Light?

MR. NUNLEY: Well objection as to form.

Q. Is that correct?

A. Yeah, I -- it's -- it may seem simple when you buy them. When you make them, it's not -- it's not really that simple, the -- the manufacturing, the filter and all and the ventilation, but basically the filtration and the ventilation will change the tar-to-nicotine ratio somewhat in going from a full flavor down to a light.

Q. So the Marlboro Lights because of the physical design choices that Philip Morris makes has a higher nicotine-to-tar ratio than Marlboro Reds; right?

A. It has a -- it has a tar-to-nicotine ratio of 12 versus 15. It's reduced the tar, reduced the nicotine, but apparently reduced the tar at a

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faster -- somewhat faster rate.

Q. So the design choices that Philip Morris makes in making the Marlboro Light effectively increase the nicotine-to-tar ratio of a Marlboro Light over a Marlboro Red; correct?

MR. NUNLEY: Objection. I think it misstates his testimony.

THE WITNESS: Excuse me?

MR. GORDON: Do you want that back again?

THE WITNESS: No. I didn't hear what he said.

MR. NUNLEY: I'm just making an objection for the record.

THE WITNESS: Oh.

MR. GORDON: He does that from time to time.

A. It effectively reduced the tar down to where we want it, where we wanted that cigarette to be, and it has a nicotine value of .9 milligrams of smoke nicotine, and that's where it came out.

Q. And in reducing that tar, you reduced the --

A. We reduced the nicotine, the tar proportionately somewhat more than the nicotine.

Q. Okay. And that results in a higher nicotine-to-tar ratio; correct?

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A. I don't know. I don't know what the -- what the number would be.

Yes.

Q. Okay.

A. Yes.

Q. And if Philip Morris had wanted to maintain the same tar-to-nicotine ratio in Marlboro Lights as exists in Marlboro Reds, it would be possible to reduce the tar by the filtration and -- and ventilation that you talk about and through blend changes reduce the nicotine; correct?

MR. NUNLEY: Objection, assumes facts not in evidence.

A. Well, theoretically you might be able to bring the nicotine down a little more. If you wanted to bring the nicotine down a little more, what you'd do is you'd just put more ventilation and better filtration and then you make Marlboro Ultralight or something like that.

Now, without -- just theoretically, it might be possible by putting in more recon to bring it down another 10 percent of what that was, whatever it is, theoretically, yeah.

Q. You actually jumped ahead, and I appreciate you doing that. The -- it --

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You could reduce the nicotine in a Marlboro Light even further with different ventilation and different filtration; correct?

A. Yeah, and in fact we have a Marlboro Ultralight product that's in test market which is like 6 milligrams of tar.

Q. But in terms of the design choices that Philip Morris makes, it has made the choice in manufacturing the Marlboro Lights to alter the tar and nicotine ratio by lowering the tar more than it lowers the nicotine; correct?

A. No. We made a decision to lower the tar down to 11 milligrams in order to have a Marlboro Light. The reality is we reduced the nicotine also, but not quite as much as the tar --

Q. Okay. And --

A. -- proportionally.

Q. And Marlboro made the design choice not to do the things it could have done to have reduced the nicotine a little bit further and -- and maintain the same nicotine-to-tar ratio as in Marlboro Reds; correct?

MR. NUNLEY: Objection. Mr. Gordon, you might want to read that question back.

Q. Do you want me to read the question back?

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A. Please.

MR. NUNLEY: Do you see "and Marlboro made the design choice"?

MR. GORDON: Oh, okay.

Q. And Philip Morris made the design choice not to do the things it could have done to have reduced the nicotine a little bit further and maintain the same nicotine-to-tar ratio as in Marlboro Reds; correct?

A. No. No, that's not correct. What Philip Morris decided to do is to provide the consumers with a Marlboro Lights at 11 milligram. It has today I think 0.9 milligrams of smoke nicotine under FTC conditions. The decision was to provide the consumers with what they wanted, a lower-tar-delivery option to Marlboro Red. That's what was provided.

Later on we made a decision to try to develop an even lower Marlboro tar product, which we referred to as Marlboro Ultralights.

Q. Okay. Right now I want to focus on the design choices that Philip Morris made in coming out with the Marlboro Lights. Philip Morris made the choice to reduce the tar in the manner it did; correct?

A. Correct.

Q. And in so doing, Philip Morris knew that the result would be that the nicotine-to-tar ratio would

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be different in the Marlboro Light than in the Marlboro Red; correct?

MR. NUNLEY: Object -- excuse me. Objection, assumes facts not in evidence.

A. I -- not having personally made that decision at the time, I -- I tell you I don't believe the decision was made to change the nicotine-to-tar ratio. First of all, we talk about tar-to-nicotine ratio. We -- we make a decision to develop the product at 11 milligrams of tar. It came out at .9. It might have come out at .8, but it didn't. It came out at .9.

Q. Okay. I --

A. That's -- that's the decision that was made.

Q. Right. And I think you may be assuming more in my question than is actually there. My question is: When Philip Morris made the design choice to reduce the -- the -- the tar in the manner it did in the Marlboro Lights, it was aware that the manner in which it chose to reduce the tar would result in a different nicotine-to-tar ratio? Whether it wanted it or not, it knew that that would happen?

MR. NUNLEY: Objection.

Q. That's my question.

MR. NUNLEY: Excuse me. Objection,

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foundation, assumes facts not in evidence.
A. I don't think that was part of the decision making.
Q. I understand that -- that that's your testimony, that that wasn't a part of the decision making. My question and -- to you as the -- as the person most knowledgable about Philip Morris's design choices in its cigarettes is: When Philip Morris made the design choice to reduce the tar in the manner it chose to reduce the tar, by ventilation and -- and filtration, from Marlboro Red to Marlboro Light, it was aware of the fact that the manner it chose to effectuate that change --
A. Uh-huh.
Q. -- resulted in a different nicotine-to-tar ratio; --
MR. NUNLEY: Objection.
Q. -- correct?
MR. NUNLEY: Objection. On that specific point, lack of foundation.
A. And my position is they would have known a -- that it would have a different tar-to-nicotine ratio.
Q. Okay.
A. Okay, yes.

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Q. And -- and I -- your counsel objected on lack of foundation. Are -- you -- do you not know?
A. That was 1967. I didn't make that decision for that product at that time.
Q. And you understand you're being produced here today as the spokesperson for Philip Morris?
A. Correct.
Q. And you understand your -- your obligation is to testify as the person most knowledgable about the -- those design choices, whether you yourself were personally involved in them or not; correct?
A. Correct.
Q. Okay. And I --
I take it you did something to prepare yourself for today's deposition.
A. Yes, sir.
Q. Okay. So your --
Are you satisfied that you -- when you give this testimony, you understand even if you didn't have personal involvement in --
A. Yes, sir.
Q. -- in this particular --
MR. NUNLEY: But, Mr. Gordon, you've asked him a very fine subset of number five, particularly going to what was in Philip Morris's mind as he's now

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testified in 1967, and you've not made -- laid any foundation for his knowledge at that point.

MR. GORDON: Well this is a 30.02(f) witness, Mr. Nunley. I don't believe I am obligated to lay the foundation for what he's obligated to -- to have.

MR. NUNLEY: I disagree with you, Mr. Gordon. I think our obligation is to produce the person most knowledgable. We've produced a witness to cover a considerable amount of time. I think you can pick out any specific areas during that considerable amount of time that perhaps no single witness can answer.

MR. GORDON: Yeah.

THE REPORTER: Off the record, please, to change tape.

(Discussion off the record.)

BY MR. GORDON:

Q. Okay. And when Philip Morris made its initial design choices with respect to the Marlboro Lights, it could have instituted design changes that would have maintained the same tar-to-nicotine ratio as in Marlboro Reds; correct?

MR. NUNLEY: Objection.

A. I think that's theoretically correct.

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Q. Is there any practical reason why it couldn't have been done?
A. Well for instance, we did not at that time, I believe, have -- have the RL plan, that kind of -- of thing.
Q. Okay. I thought, if I understood your earlier testimony, that one of the ways that the nicotine could have been lowered would be to modify the ventilation.
A. I didn't -- I didn't say that.
Q. So modifying ventilation --
A. I didn't say that.
Q. -- wouldn't affect the nicotine -- the amount of nicotine?
A. If you increase ventilation, you'll reduce across the board tar and nicotine.
Q. Okay.
A. But I did not say that ventilation was a means of -- of independently adjusting nicotine.
Q. Okay. Has Philip Morris ever changed the nicotine-to-tar ratio difference between Lights and Reds?

MR. NUNLEY: Objection as to form.

A. I'm -- I'm sorry, I'm not really sure what the question -- what you're asking me on that.

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Q. Okay. Let me -- let me see if I can ask it a different way.

You were talking earlier about -- about the initial design choices made in 1967 when Philip Morris first came out with Marlboro Lights. Okay?

A. Uh-huh.

Q. And you -- you were trying to explain the difference between what was theoretically possible and what was practically possible back in 1967. At some point in time, there's no question that it became practically possible to modify the nicotine/tar ratio of the Marlboro Light in order to keep it the same as Marlboro Red; correct?

MR. NUNLEY: Ob -- objection as to form. Move to strike counsel's statement at the beginning of the question.

Q. Do you recall the question?

A. Your question was there -- there were -- was some time then after where it might be possible for Philip Morris to -- to have gone in and made an adjustment in blend -- is that what you're asking me? -- to change the nicotine delivery?

Q. Right.

A. And theoretically that's possible, but to make an adjustment large enough to -- to -- and I -- I'm

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Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

trying to guess. I guess you'd have to get down 25 percent lower, without doing the mathematics, would require so much recon, say, to replace the bright burley strip in there that you may have a cigarette that you could force in that direction. The problem with it is you wouldn't want to put Marlboro's name on it because it would no longer taste and smoke like a Marlboro.

Q. Okay. Another way of adjusting the nicotine-to-tar ratio is by the addition of chemicals to the cigarettes; correct?

A. I said if you added nicotine to the cigarette, you could adjust the tar-to-nicotine ratio.

Q. How about if you add acid to the filter?

A. What I recall is that that would not have an impact on a tar-to-nicotine ratio. Acids could affect the total delivery, but I would not see that as having reasonably a -- a independent effect on nicotine.

MR. GORDON: Okay. Can I have the court reporter mark this, please.

(Plaintiffs' Exhibit 1303 was marked for identification.)

THE WITNESS: Oh, okay.

BY MR. GORDON:

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Q. Dr. Houghton, I'm showing you what's been marked as Plaintiffs' Exhibit 1303, a document produced by Philip Morris bearing Bates stamp number 2023957309 through 7323, a Philip Morris USA interoffice correspondence dated January 23, 1990 from Gus Keritsis to Tim Callaham.

A. Uh-huh.

Q. And the subject is entitled "Nicotine Reduction in Cigarette Smoke with Acidic Filter Additives." I'll give you a moment to look at the document.

MR. NUNLEY: Mr. Gordon, can you -- can you direct me where on the -- for the predesignation of this document?

MR. GORDON: I don't have the predesignation in front of me.

MR. NUNLEY: Well I don't -- I'm looking at this one. I don't find it.

MR. GORDON: It may have been on the --

MR. NUNLEY: Well I'd like you to find it. I'd just like -- because I don't see it on the predesignation. I'm not saying it's not on there. I'm just telling you the one I can put my hand on, I don't see it.

MR. GORDON: Chip, I don't know where it is, but I'm reasonably confident it was on the

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Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

predesignation list.

MR. NUNLEY: Well then I'd ask you, if you can't show me, let's put this one aside. I'll look for it. If I find it, you can certainly ask this question of this witness about it.

MR. GORDON: No, I'll -- I'm going to keep going with this question with the witness.

MR. NUNLEY: No. Mr. Gordon, I'm just -- I want to make the record on this. I'm looking at your September 15 designation, which appears to me to be in Bates number order. This is 202395. I'm looking at Philip Morris. I see 202395. This listing I have goes from 2023861873 to 202400. Now that's -- that's on that one. I'm looking now, and I'd ask you to look, too. If you have it on another designation, please tell me, but if it hasn't -- perhaps it's on here.

It's predesignated, although I would note that it's on a supplemental predesignation.

BY MR. GORDON:

Q. Is it giving you a chance to look at that at least?

A. I'm -- I'm reading it. Is it okay?

Q. Sure, absolutely.

(Witness reviews Plaintiffs'

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Exhibit 1303.)

BY MR. GORDON:

Q. There are just a couple of things I actually want to draw your attention to. You're certainly free to read the -- the whole thing if you -- if you want to, but the first thing I want to --

MR. NUNLEY: Let -- Mr. Gordon, let me just say if this document -- I don't know what your questions relate to, but if they relate to the use of additives in cigarettes to increase nicotine in smoke, that I think falls more appropriately in Dr. Ellis's side of this designation.

MR. GORDON: Well let's see what this witness is able to say.

MR. NUNLEY: Well, is that going to be your test -- your questioning?

MR. GORDON: Chip, let me go on with the questioning.

MR. NUNLEY: No.

MR. GORDON: You know, you're not entitled to instruct the witness not to answer unless it's a matter of privilege.

MR. NUNLEY: Well I -- excuse me. I think on -- on this situation we are. If I tell you that we have another 30.02(f) witness, which I think,

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Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

Corey, I've already told you, who will address the issue of the use of additives, to the use of additives and whether the use of additives may have any impact on the delivery of nicotine, Dr. Ellis would address that. I told you that at the beginning of today. I told you that when we talked by phone. I don't --

MR. GORDON: I appreciate that. That's not a basis for instructing the witness not to answer.

MR. NUNLEY: Are you interrupting me?

MR. GORDON: Yeah, I am, because I want to get on with this deposition and I'm really getting tired of your continual interruptions and your continual speaking objections. If -- if -- if I ask a question that invades privilege, you can instruct him not to answer. If I don't, object, and let's get on with the -- the deposition.

MR. NUNLEY: Corey, there's no reason to raise your voice and knit your brow. I'm just trying to tell you that we tried to give you on number five two witnesses to cover it. I've told you going in how that would be divided. Now I think it's improper if you're going to try to basically cover with both witnesses the same ground.

MR. GORDON: Your objection is noted.

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

MR. NUNLEY: Well there's -- there's more to it, and the more is I won't instruct this witness not to answer, but I'm telling you now he's not answering in a 30.02(f) capacity. You can ask Dr. Ellis about the use of additives to increase nicotine delivery.

MR. GORDON: Is the court getting real time of this transcript?

THE REPORTER: No.

MR. GORDON: I -- I just want to put you on notice, Mr. Nunley, if this kind of stuff continues, we're going to call the court because this is ridiculous. You are impeding my ability to examine this witness, and it is a violation of the case management order.

MR. NUNLEY: Corey, all I'm trying to do is have the appropriate witness on this topic answer your questions.

MR. GORDON: If you believe a question is outside the scope of this witness's knowledge, you have the right to object on grounds of foundation. You have demonstrated a perfect ability to interpose that objection. Please do so, and let me get on with the questioning so we can finish today.

BY MR. GORDON:

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

Q. Dr. Houghton, I direct your attention to page five of this document, the cc list.
A. Yes.
Q. You were one of the recipients of this document, were you not?
A. That's correct. That's what it says.
Q. Okay. Now direct your attention back to page one, and what -- what is the first conclusion? Could you read that for the record.
A. Yeah. I want to point out one thing. This is GCC; that's Gulf Coast countries. This is -- this is relative to an export cigarette, so just so I point it out.

"The addition of acidic additives to CA-filters reduces the nicotine-to-tar ratio, and certain other basic/acidic substances in cigarette smoke."

Q. Okay. Is there anything unique about the -- the Gulf Coast that makes -- that would make the addition of acidic acids to CA-filters and their ability to reduce the nicotine/tar ratio different than what would happen to the same cigarettes in the United States?
A. Yeah, it's --

MR. NUNLEY: So the record's clear, Gulf Coast is not Gulf Coast of the United States, but

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Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

it's Gulf Coast countries.

MR. GORDON: Right.

A. It's the Gulf Coast countries, you know, Saudi Arabia, et cetera.

Q. Right. Is there something unique about Saudi Arabia that if you put acids in the filter there it reduces the nicotine-to-tar ratio, but if you put the same acid in the same filter in a cigarette in Minnesota, it doesn't?

MR. NUNLEY: Objection as to form.

A. I -- I couldn't answer that off the top of my head, but there is a big difference between the Marlboro marketed and sold in Saudi Arabia and the U.S. markets, Marlboro sold in Minnesota, yes.

Q. Okay. But my question relates to the -- the science. If a -- if an acidic additive to a filter reduces the nicotine-to-tar ratio, does it matter if the cigarette is sold in Saudi Arabia or in St. Paul?

MR. NUNLEY: Objection, incomplete hypothetical.

A. I'd have to take a look and see what it says in here to answer your question. Is there a difference between a longer filter and a shorter filter, different kinds of ventilation, different levels of

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Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

ventilation, that might affect the results between a cigarette sold here and a cigarette constructed differently sold someplace else? I -- I don't know if it would have the same effect.

Q. No, my question is: If a cigarette is constructed identically --

A. Oh, identically? No.

Q. Is there anything about Minnesota --

A. No.

Q. -- that's -- okay.

A. No. And what I was trying to point out is that they're not identical, so I need to take a look and see what the data says. Is that okay?

Q. I'd like to direct your attention now to conclusion number five. Could you read that, please.

A. "Depending on the cigarette blend, the maximum nicotine-to-tar ratio reduction that can be achieved in smoke by acidic additives is about 20 percent, normally 10 to 16 ...."

Q. And earlier we were talking about the nicotine-to-tar ratio in a Marlboro Light being about 25 percent higher than in the Marlboro Red; is that right?

A. I think the numbers are like 14.7 to 1 versus 12

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Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

and a half to 1, 2.2 over 12 and a half. It's maybe 16 percent if you look at it that way.

Q. Okay. Is there any reason that the addition of acidic additives to a Marlboro Light would not result in a sufficient lowering of the nicotine-to-tar ratio to make it equal to a Marlboro Red?

A. It's theoretically possible. I don't know if it would taste like a Marlboro Light.

Q. Okay. And number four lists several different acids that could be used; right?

A. Yes.

Q. By the way, it refers to a CA-filter. What is that?

A. Cellulose acetate.

Q. Are cellulose acetate filters used on either Marlboro Reds or Marlboro Lights sold in Minnesota?

A. Yes.

Q. Is there anything different about the cellulose acetate filters sold in Saudi Arabia than the ones sold in Minnesota?

MR. NUNLEY: Objection, foundation.

A. Probably.

Q. What's the difference? What would -- what would the differences be?

MR. NUNLEY: Objection, foundation.

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Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

A. The material that you would select for -- for a more efficient filter may be made of CA, but the form, the -- the cross-sectional look at it, the amount of fiber that you would have in the filter could be significantly different, the amount of ventilation.

Q. Okay. And the --

The types of acids that can be added to the cellulose acetate filter to re -- to reduce the nicotine-to-tar ratio are described as polycarboxylic acids; correct?

A. Yes.

Q. And that would include such acids as citric acid and malic acid and tartaric acid; correct?

A. Yes.

Q. Has Philip Morris ever added any polycarboxylic organic acids to the cellulose acetate filters of any cigarettes sold in Minnesota?

A. Not that I'm aware of.

Q. Okay. Nicotine does not contribute to the taste of a cigarette, does it?

MR. NUNLEY: Excuse me. Are we finished with this document?

MR. GORDON: Yes.

A. I think it does contribute to the taste.

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Q. Did Philip Morris ever conduct any studies to determine whether nicotine contributed to the taste of a cigarette?

MR. NUNLEY: Objection, outside the scope of number five of your predesignation, Mr. Gordon. Corey, are you going to attempt to stay within the predesignation or not?

MR. GORDON: I believe I'm doing so, Mr. Nunley. I don't agree with your objection. I guess it will be for Judge Fitzpatrick to decide, not you and not me.

MR. NUNLEY: Well I think you have some obligation to stay within it, not just to tell me to shut up and get -- and make objections.

MR. GORDON: Well I don't think I've told you to shut up, but I would be lying if that phraseology hadn't crossed my mind.

MR. NUNLEY: Well I don't care whether you'd be lying or not, but I think you have an obligation, Corey, to stay within the bounds. I don't think you can come in here and say, "Well you can make your objection for the record. I'm going to ask what questions I want." I think you're very prone to tell me about my obligations under the order. I think you bear them, too, in this

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instance.

MR. GORDON: Well under Minnesota's 30.02(f) I can ask this witness any question I want. You can instruct him not to answer for privilege. If it exceeds the scope of a 30.02(f) but the witness has knowledge to testify, he testifies not on behalf of the company. I am entitled to ask him, and if you don't think it's within the scope of the 30.02(f), you go ahead and make that objection, and your objection will be noted for the record.

BY MR. GORDON:

Q. Do you recall the question?

A. No.

Q. Has Philip Morris -- let me -- let me -- let me re -- restate it.

Did Philip Morris ever conduct any studies to determine whether nicotine contributed significantly to cigarette flavor?

MR. NUNLEY: Excuse me, Dr. Houghton. Objection, lack of foundation, outside the scope of this designation.

You can answer.

THE WITNESS: Oh, thank you.

A. There -- there have been experiments, there have been prototype cigarettes made in which the

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subjective impact of nicotine has been attempted to -- to -- to be able to identify, yes.

Q. Okay. And it's your understanding that those studies concluded that nicotine does contribute significantly to cigarette flavor?

MR. NUNLEY: Objection, foundation, outside the scope of the 30.02(f) notice.

A. What I recall is that there was a general impression that nicotine contributed to the subjective acceptability of the smoke at the time on -- on some of the experimentation. I'm not -- I'm -- one prototype cigarette I recall with -- that I smoked, it had an impact on the taste. I'm not saying it was a positive impact at that time for that -- that one prototype I recall smoking.

Q. In fact, nicotine has an aversive taste, doesn't it?

MR. NUNLEY: Objection, mischaracterizes his testimony, is outside the scope of the 30.02(f) and lack of foundation.

A. I don't -- I don't feel that I can answer that as an expert, that -- that specific question about an aversive taste. What I recall about the denic cigarettes where essentially you had the absence of nicotine, what you did not get as a result of that is

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a positive reinforcement in the subjectives of the cigarette.

So at least from -- from evaluating that product, I would say that the -- the lack of nicotine had an impact on the subjective acceptability, so the -- some -- to some extent nicotine is making a positive in a normal cigarette for consumers from a subjective point of view.

Q. In terms of its taste, though, one of the design criteria that cigarette makers have to consider is that because nicotine tastes so awful, it has to be masked by other components of the cigarette smoke; correct?

MR. NUNLEY: Objection, lack of foundation, outside the scope of this 30.02(f) number five and calls for speculation.

A. I never tasted nicotine per se myself. Okay? I -- I told you the one -- one prototype I remember -- recall smoking that had nicotine added to it was aggressive and unpleasant. I think there's a balance between tar and nicotine that -- that -- that consumers like, and as long as you stay inside that range, you -- you can make a -- a balance-positive smoking experience for the consumer.

Q. You need both the nicotine and the tar to have

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Source: http://www.industrydocuments.ucsf.edu/docs/mqhd0001

that balance-positive experience for the smoker; right?

A. I believe that there is a -- an acceptable range out there between tar and nicotine, this -- this ratio of tar to nicotine, that consumers find acceptable.

Q. In fact, there is a minimum amount of nicotine needed for smoker satisfaction; right?

MR. NUNLEY: Objection, outside the scope, lack of foundation.

A. Well if -- if I really believed that, then I certainly shouldn't have pushed to have denic processed, the process developed, the products developed, et cetera. I think you could make a good cigarette in the denic -- of the denic type if you had the right kind of process for removing the nicotine.

Q. Okay. And would you agree that there exists a maximum concentration of nicotine in smoke to let the taste -- taste of the smoke be unaffected?

MR. NUNLEY: Objection, foundation, outside the scope.

A. I really don't know.

MR. GORDON: Can I have this marked, please.

http://legacy.library.ucsf.edu/tid/bpn95a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

(Plaintiffs' Exhibit 1304 was marked for identification.)

BY MR. GORDON:

Q. Showing you what's been marked as Plaintiffs' Exhibit 1304, a document produced by Philip Morris bearing Bates stamp number 2023186690-A, a single-page document dated July 29th, 1987 entitled "NEW TAR QUALITY PYROLYSATES TO DISTILLATES."

Up at the top it says "Department S&T, PMNE." Do you know what that stands for?

A. Department is science and technology, Philip Morris, and the "NE" should be "Neuchatel."

Q. Okay. Is that where you were based when you were in Europe?

A. Yes.

Q. Is that the department that you ran when you -- the three years you were in Europe?

A. No. This is not part of research and development there.

Q. Science and technology is separate?

A. It's a separate function, yes, sir.

Q. Okay.

A. Or --

Q. Who is W. Reininghaus?

A. Reininghaus is a -- let's see. It's 1987. He

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

would have been a scientist at INBIFO.

Q. And that was a science -- a scientific research facility owned by Philip Morris; correct?

A. Yes.

Q. And could you read the very first full sentence of Exhibit 1304.

A. I was trying to read it my -- okay. "SUMMARY OF PROJECT.

"Any future reduction of tar levels will come into conflict with a twofold limit, as (1) a minimum amount of nicotine is needed for the smoker's satisfaction (ca. 0.8 milligrams per cigarette) and (2) there exists a maximum concentration of nicotine in smoke to let the taste of the latter unaffected" -- "to let the taste of the latter unaffected (less than 10 percent). Therefore, the possible limit of tar reduction will be reached at approximately 8 milligrams."

You wanted --

Q. That -- that's fine.

A. Okay.

Q. In terms of designing cigarettes, Philip Morris was aware that a minimum amount of nicotine was needed for smoker satisfaction and there was a maximum amount of nicotine -- excuse me, a maximum

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

concentration of nicotine that would leave the taste of smoke unaffected; correct?

MR. NUNLEY: Objection, assumes facts not in evidence, no foundation for the document, outside this witness's designation and lack of foundation.

A. I would -- before I could answer, I would prefer to understand what's in the rest of this thing that I can't see. Okay?

Q. Yeah, me too.

A. And second of all, I -- I don't know who wrote this, but the department of science and technology was not the department responsible for design of cigarettes, development of cigarettes, nor am I aware of anybody in that -- in that department at that time who would have had that kind of knowledge or experience. I -- I don't know what this project is they're talking about, so it's really hard for me to answer why this person, whoever it was, said this. I'm sorry, I --

Q. Is it something you disagree with?

MR. NUNLEY: Objection. Is what something he disagrees with?

MR. GORDON: That there's a minimum amount of nicotine necessary for smoker satisfaction.

MR. NUNLEY: Objection, lack of foundation,

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

outside the scope.

A. I personally believe that we could successfully market denic cigarettes and we are very successful at developing and marketing cigarettes at 1 milligram of tar and .1 milligram of smoke nicotine, and I do not believe that this limit of 0.8 approximately is -- is the lowest level of -- of cigarette delivery that consumers would like. There are a lot of cigarettes in the United States sold that deliver less than 8 milligrams, including the brand I would smoke.

Q. You --

That 1 milligram to -- tar to .1 milligram of nicotine that you just mentioned, is that the Merit Ultima?

A. Well it's not just in the United States that is our bestselling 1-milligram cigarette, but the 1-milligram market in the U.S. is extremely small compared to other markets around the world.

Q. Okay. That's a nicotine-to-tar ratio of approximately 10; right?

A. That's a tar-to-nicotine ratio of approximately 10, yes, sir.

Q. So it's actually about 50 percent a higher nicotine-to-tar ratio than the Marlboro Red; right?

MR. NUNLEY: Objection, assumes facts not

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Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

in evidence.
A. I'd have to do the calculation on an average, but it's somewhere around 14.7 -- 14.7 to 1 I believe is the tar-to-nicotine ratio on a Marlboro Red. This is approximately 10 tar to 1, so it -- it's a -- definitely a lower tar-to-nicotine ratio. If you reverse it around, it would be a higher nicotine-to-tar ratio.
Q. By about 50 percent; right?
A. I -- I assume so without doing it.
Q. In designing cigarettes, Philip Morris has learned that there's an optimal dose of nicotine; correct?
MR. NUNLEY: In designing cigarettes?
MR. GORDON: Uh-huh, yes.
A. I -- I'm not even sure what those words mean, optimum dose.
Q. Well too little or too much is rejected by tobacco smokers.
A. What consumers prefer most is their brand that they're smoking. Okay? That's their preference. They may not like a cigarette that had a higher tar and nicotine delivery or much lower tar and nicotine delivery, but each consumer's preference, which I -- I would consider to be optimum, is what they're

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smoking. A Marlboro Red smoker would prefer a cigarette that's roughly 16 milligrams of tar to 1 -- 1 milligram of smoke nicotine, so for that consumer the optimum product would be 16/1.0.

MR. GORDON: Can I have that marked.

(Plaintiffs' Exhibit 1305 was marked for identification.

BY MR. GORDON:

Q. Dr. Houghton, I'm showing you what's been marked as Plaintiffs' Exhibit 1305, a document produced by Philip Morris bearing Bates stamp number 2028635742, a single-page document at the top --

A. Uh-huh.

Q. -- that says "SEARCHMANAGER 370 - DOCUMENTS PRINTED FROM DATA BASE: CONF."

A. Yes.

Q. Okay. This refers to a -- a C. Jeanneret as an author. Do you see that?

A. Yes, I do.

Q. Do you know who that is?

A. I've heard of him, but I -- he was not in Neuchatel when I was there.

Q. Okay.

A. This -- this must have been before that -- oh, "PUBLICATION DATE 1975," yeah. I've just heard of

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

him.

Q. Jeanneret was an -- was an employee of Philip Morris's Neuchatel operations; correct?

A. Jeanneret, right.

Q. Jeanneret. And this is a abstract of a research paper that Jeanneret had written; is that correct?

MR. NUNLEY: Objection, foundation.

A. I -- can I take a quick read of it --

Q. Sure.

A. -- just to make sure?

(Witness reviews Plaintiffs' Exhibit 1305.)

A. Okay.

Q. Okay. And this document says, quote, "APPARENTLY THERE IS AN OPTIMAL DOSE OF NICOTINE; TOO LITTLE OR TOO MUCH IS REJECTED BY TOBACCO SMOKERS." Do you see that?

A. Yes, I see that.

Q. Okay. Is that something you agree with or disagree with?

MR. NUNLEY: Objection, lack of foundation, outside the scope.

A. I -- I -- I don't know what he's referring to. I -- you know, too little or too much, I think if you say it's too little or you say it's too much, you're

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already saying it's -- it's not good, okay, just the words, but I believe that consumers have a preference for the kind of cigarette that they are presently smoking. They prefer what they smoke. If you adjust the cigarette down in delivery, they -- and it's not a huge difference, they may not reject it. But the fact is that consumers, I believe, are moving down in their preferences and consumers start to like their new cigarette and then soon it becomes their optimum.

So I think -- I think it depends upon the consumer. They move down in delivery. They move down in tar, and they -- they like -- when they get to the next level, they like it, and pretty soon that's their optimum or their preferred. I -- I think you can take the consumer down in tar and delivery as long as you're providing them with a good taste. They'll -- they'll accept that. They'll -- they'll move down.

So I think it's wrong to say that there's too -- you know, too little would be rejected by tobacco smokers. There are countries today where you have 15 percent of the market is basically 1-milligram tar product.

Q. And 1 milligram of nicotine?

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

A. One-tenth of a milligram, yes.
Q. Excuse me. One-tenth of a milligram, right.
A. Yes.
So no, I cannot agree with what this man said in 1975.
Q. So consumers will buy cigarettes that have as little as .1 milligram of nicotine; right?
MR. NUNLEY: Objection, foundation and outside the scope.
A. There -- there are some products that are successful in the United States at 1 milligram of tar, .1 smoke nicotine, and -- and there are other markets where -- where they're very successful, more successful relative than -- than the U.S.
Q. And a cigarette with 97 percent of its nicotine removed was not successful in the United States; right?
A. I think that cigarette was not. I'm not saying that our competitors might not find a way to successfully do that and I'm not saying that Philip Morris might not find a way to successfully do that. I certainly wish that thing had been as commercially successful as we had been with, say, 1-milligram cigarettes in other markets.
Q. The primary reason people smoke is to deliver

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nicotine into their bodies; correct?

MR. NUNLEY: Objection, foundation and scope.

A. There are obviously people who believe that the only reason people smoke is for that.

Q. I said "the primary reason."

A. Oh, the primary reason. Excuse me. There are people who believe that, yes.

Q. People within Philip Morris?

A. Absolutely.

MR. NUNLEY: Objection. Excuse me. Objection, foundation, outside the scope.

A. I have seen documents that indicate people at Philip Morris believe that too.

Q. Did you believe that when you were at Philip Morris?

A. I did not believe that the primary reason for people to smoke was to get -- if you -- to get nicotine -- what's it say?

Q. To deliver nicotine into their bodies.

A. I did not believe that's the primary reason for people to smoke.

Q. What do you believe is the primary reason?

MR. NUNLEY: Mr. Gordon, I really think this is way beyond the scope and you're -- you seem

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to be acknowledging that perhaps it is, but I think that it is. I object on that basis and lack of foundation.

A. I think that this is an area that is probably better addressed by Dr. Ellis.

Q. Okay. Fair enough.

A. Okay.

Q. I -- I asked you to let me know that, and that's --

A. Okay.

Q. -- fine.

Would you agree that it would be improper for Philip Morris to add anything to its cigarettes that would make it more difficult for people to quit if they chose to quit?

MR. NUNLEY: Objection, outside of the scope.

A. Whew, another area that's probably better addressed by Dr. Ellis than -- than I. I mean, if I talk about an issue like that, it's not with a technical background or a basis for it.

Q. It is possible to modify the pH of cigarettes; correct?

A. As long as we're -- we can agree on what the word "pH" means for cigarettes. There are

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methodologies for measuring what's called a pH of tobacco smoke. Relative to the cigarette itself, I don't know how you measure pH of the cigarette. Relative to the smoke, you really can't measure pH of the smoke per se, but if -- if you bubble the smoke through -- through a, oh, water solution, you can measure the pH of that solution there. And there has been work done which measures the pH of whole smoke, yes. That can be measured.

Q. And there are chemicals that can be added to cigarette filler that affect the pH of the smoke; correct?

MR. NUNLEY: Mr. Gordon, this is a specific area that I told you when we had the conversation that would be within Dr. Ellis's realm. And if you want to pose a question to Dr. Houghton, you can do it, you know.

MR. GORDON: He's -- he's capable of telling me when it's -- when it's in Ellis's bailiwick. If -- if he wants to agree with that, that's fine.

MR. NUNLEY: But that's not necessarily his -- his responsibility to do that. I mean, you know that I told you pH is an issue that Dr. Ellis would be handling.

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And, Corey, if you're going to -- I don't think you can -- you can pose the same questions to both witnesses.

MR. GORDON: Well if he can answer it, I -- then I maybe don't have to waste my time with Ellis.

MR. NUNLEY: Well it's not a matter of wasting your time. It's a matter of we had a conversation about this, and I told you Dr. Ellis would handle questions about pH and issues relating to manipulation. And you didn't take any issue with that.

A. I -- I'd prefer that you not waste your time with me on it.

MR. GORDON: Okay. Thanks.

MR. NUNLEY: Good.

THE WITNESS: Thank you, Gordon.

THE REPORTER: Off the record, please.

(Luncheon recess taken at 1:02 o'clock p.m.)

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AFTERNOON SESSION

(Deposition reconvened at 2:25 o'clock p.m.)

(Witness sworn.)

MR. NUNLEY: Let me just one housekeeping matter, Corey. You asked Ms. Purcell this morning some questions about some documents related to production. I have obtained some information that I think will answer some of the questions you had about these, and I'm prepared to give it to you on the record and would like to do that now, and I think it's appropriate to do it.

MR. GORDON: Well I understood time was a problem and we're --

MR. NUNLEY: It's going to take --

MR. GORDON: -- and we're not going to do Category II issues this afternoon.

MR. NUNLEY: It's not going to take me very long. I mean, if --

MR. GORDON: Go ahead.

MR. NUNLEY: All right. It relates to what you marked as 1301, and particularly 1301 is Bates number 2059507100. It is not a Category II document. I think you referred to it as a Category II document. It is a file folder. It was

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produced to you, as I understand it, yesterday, I believe, in a non-designated box. That was box number 12036. Documents in that file, Corey, are numbered 2059507101 through 7205. Those documents represent the content of the box. They were produced to you in Category II box 12035. There is a document 7206 in that same Bates range through 7211 -- 7211. It is not a responsive document and was not produced.

The next document is a file folder for a Marlboro -- it says "MARLBORO FORMULAS." It is not a Cat II document. This is 2059507212. It is indeed a copy of a file folder. It's not a Category II. It's not designated. It was produced to you in box 12036. It had within it documents range 2059507213 through 72 -- no, excuse me. It did not have within it that. I'm sorry, it did. It had within it Bates range 2059507213 through 7215, which were produced to you in Category II box 12035.

The next is -- is another file folder, 2059507216, labeled "Tobacco Extracts/Alcohol." It was produced to you in the non-designated box. Its contents, which are Bates numbers 2059507217 through 7240, were produced to you in Cat II box 12035.

And a third file folder, 2059507242, which is

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identified as "Signed & Complete," was produced in non-designated box 12036, and its contents, 7243 through 7291, were produced in a Category II box 12034.

(Discussion off the stenographic record.)

ELLEN MERLO

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. GORDON:

Q. Would you state your full name for the record, please.

A. Yes. It's Ellen Merlo.

Q. Who is your present employer?

A. Philip Morris USA.

Q. What is your title?

A. Senior vice president of corporate affairs, Philip Morris USA.

Q. And you're here today to testify on behalf of Philip Morris as to issues related to youth smoking; is that correct?

A. I am.

Q. Okay. And you are designated as the person most knowledgable within Philip Morris related to youth

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smoking issues; correct?
A. I am the person designated for Philip Morris as the most knowledgable about our policies and practices as they apply to youth smoking.
Q. And it is the policy of Philip Morris to oppose youth smoking; correct?
A. To oppose youth smoking, yes, it is.
Q. How long has that been Philip Morris's policy?
A. As long as I can remember, and I've been with the company for 28 years.
Q. And how much before that was it Philip Morris's policy to be opposed to youth smoking?
MR. HOWARD: Objection. You may answer if you know.
A. As long as I can relate to. I mean, I can't give you a year, but for many, many years it's always been our policy to not market to and to support programs that evolved over the years against youth marketing.
Q. Well, would it be correct to say that it has been Philip Morris policy to be opposed to youth smoking as far back as the 1950s?
A. It's hard for me to answer because I was not part of Philip Morris in the 1950s, but as long as I know and as long as I've been associated with the

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company and been involved with the company in upholding its practice -- practices and policies, we have had a stand on the issue of youth smoking.

Q. Okay. Did you do anything to prepare yourself to testify today to be able to fill in the knowledge prior to your personal involvement with Philip Morris?

A. I've -- I had a session with counsel.

Q. Okay. And other than that, did you do anything to find out what Philip Morris's policies were with respect to youth smoking before you became employed?

MR. HOWARD: Objection. You can answer.

A. No, I did not.

Q. So you're relying on what counsel told you?

MR. HOWARD: Objection.

A. No, I'm -- I'm relying on what I know from personal experience, what I know about the company, what I know about my colleagues who were with the company before I joined it and what their position has been and my general understanding of what our corporate policy has been in all these years.

Q. But you didn't undertake anything specific to familiarize yourself with those policies in order to prepare yourself to testify today as the spokesperson for Philip Morris on the issue of youth smoking?

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A. I did not.

MR. HOWARD: Objection. Objection, just clarify the policies and time period. I take it that question was the time period --

MR. GORDON: Right.

MR. HOWARD: -- before --

MR. GORDON: Right.

MR. HOWARD: -- she joined the company.

THE WITNESS: Yes.

Q. You understood that?

A. I did and I -- and I answered it.

Q. Okay. And it's Philip Morris's publicly stated position that advertising does not encourage people to smoke; correct?

A. That is our public position, that advertising in itself -- in and of itself is not something that would get someone to -- to smoke or not to smoke.

Q. And it's your position that advertising does not in any way make smoking appear to be attractive to youth; correct?

MR. HOWARD: Objection.

A. I don't believe that advertising makes smoking attractive to youth.

Q. What does Philip Morris believe?

A. I can't speak on behalf of what Philip Morris

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believes as far as -- as advertising in general, but I can tell you that we don't believe that the existence of advertising in and of itself would be something that would encourage a young person to smoke.

Q. So when you say Philip Morris doesn't market to kids, what is it it doesn't do?

A. Well, first of all, there are a lot of things we don't do to ensure that kids don't have access to our cigarettes, and there are a lot of things we do do to make sure that kids don't have access to our cigarettes. So we're also proactive in this area, but we certainly follow an advertising and promotional code. We've subscribed to a sampling code. We are very careful in the placement of our advertising as far as the magazines that we employ, but beyond that we've taken proactive measures with the introduction of our AAA, Action Against Access initiative, many of our practices throughout the years to ensure that young people don't have access either to our products, nor to some of the programs that we offer.

Q. You say you're careful in the placement of advertising as far as magazines are concerned.

A. That's correct.

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Q. Why?
A. Why? Because we -- first of all, as a good marketer, one tends to focus on your audience, and our audience is adult smokers. I mean, that's who we want to reach with our message, and that's where we spend our advertising dollars, because that makes good business sense.

Beyond that, we have no interest in focusing our message on young people, and therefore we don't advertise in publications that are read by young people.

Q. How do you make that determination?
A. Oh, by --

MR. HOWARD: Objection. What determination?

MR. GORDON: As to whether or not magazines are read by young people, certain magazines.

A. There is readily available data through the magazine companies themselves. They're fully audited. They have readership numbers. They have demographic numbers, statistics, et cetera.

I mean, it's a -- it's a whole process of selection when you're thinking about a media campaign as to how you evaluate what magazine you might advertise in or not. Even smoking indices exist for

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various readership bases.

Q. In terms of the youth demographics, is there any kind of percentage threshold that triggers your decision not to advertise in a particular magazine?

A. Yes, about 15 percent under the age of -- of 21.

Q. So if 15 percent or more of a magazine's readership are under the age of 21, you won't advertise in it; is that correct?

A. That's normally our policy, yes.

Q. So in other words, if -- even if 85 percent of the readership is over 21, you would decline to advertise in it?

A. Well, I mean, you're -- you're -- you're cutting that number very thin. I said 15 -- under 15 percent, so if 85 percent were over, I mean, it would just -- that would be a borderline case, wouldn't it, and I'd have to know what magazine you were talking about?

Q. Okay.

A. But in general, that would be correct.

Q. Why?

A. Why what?

Q. If a magazine had 85 percent read -- readership in excess of 21, why wouldn't you place your ads

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there?
A. I'm not sure that we wouldn't. That's what I'm saying to you, that I -- I'm not -- I'm not understanding the distinction that you're making between the 15 percent under and 85 percent over. To me, that would be exactly the same demographic unless I'm missing something.
Q. Okay. My question is -- is, if I understand you correctly, you're saying if a magazine's readership is 15 percent or more under the age of 21, you will decline to advertise. And my question is: If a magazine like that exists; in other words, 15 percent of its readership is under 21, but then twenty -- excuse me, 85 percent of its readership is over 21, why wouldn't you advertise in that magazine?
A. Because, in our opinion, there would be too much of the readership that was too young to -- for us to place our advertising.
Q. Well what difference does it make if the readership sees your advertising if you believe that advertising doesn't do anything to encourage young people to smoke?
A. Well I still think it's -- it's good practice not to focus your advertising on an audience that you're not interested in reaching or selling to, and

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I -- I -- I thought I did make that -- that point before, that in fact it's only good business practice aside from good public policy to advertise in those publications where you're going to reach the -- the -- the -- the largest share of potential consumers, and those are adults, and in our case they are adult smokers. And we tend to choose publications that by their editorial content, by their readership, et cetera, appeal to adult smokers.

Q. Okay. So it's an economic decision and not a decision to avoid advertising to youth?

A. I think you're just taking one part of my testimony. I said it is good business policy as well as good public policy; it's both. You asked me for an explanation for one piece of it and I'm giving it to you, but we also have public policy about youth and making sure that we do not target our message to youth because we are not interested in attracting them to our product. More importantly, we're very supportive of denying them access, so aside from the things that we don't do, we very proactively do other things to deny mi -- minors access to our products.

Q. I know you want to talk about access and we'll talk about access, but I want to talk about marketing

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right now.

A. All right.

Q. You say you're not interested in attracting youth to your product.

A. That's correct.

Q. Okay. But you don't believe advertising does attract youth to your product; right?

A. I don't --

MR. HOWARD: Objection to the term "product" here. It's ambiguous, but you may answer.

A. I don't believe that advertising is a primary reason that young people smoke or choose to smoke.

Q. Is it a secondary reason?

A. I -- it's hard. I don't know. I don't know that for a fact. I'm not an expert on why young people do what they do or don't do what they do. All I can tell you is it is my personal belief that advertising is not the cause, and I think that, as I look around the world at other models, that has been borne out. There are many places in the world that have banned advertising totally, and when they haven't combined that with some sort of a prevention, educational, denying-access program, in fact smoking incidence among young people goes up; it doesn't go

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down.

So I would have to say that singling advertising out as a cause would not be an accurate way to portray what advertising does.

Q. Does Philip Morris believe that advertising plays any role in attracting people to smoke, even if it's not the primary reason?

A. It may play some role in product choice, which is what our belief is, that advertising in fact in a mature product category like cigarettes would play and does play a role in influencing those adults who have made the choice to smoke to pick one product over another.

Q. So Philip Morris believes that advertising can play a role in influencing people which brand to start smoking?

MR. HOWARD: Objection, mischaracterizes the testimony.

A. Yes, I -- I don't think I said "start." I said --

Q. I'm asking you about starting.

A. I -- I -- I don't believe that in a mature product category like cigarettes that advertising plays a role in persuading someone to start doing something that they hadn't already made a decision to

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do. I think it aids brand choice.

Q. I'm going to re-ask my question. I'm going to move to strike that last answer as nonresponsive.

Does Philip Morris believe that advertising can play a role in influencing people which brand to start smoking?

MR. HOWARD: Objection. I think the answer was entirely responsive, and I -- I object to your characterization of her testimony. You may answer again.

A. I really can't give you a "yes" or "no" based on the way you've asked me the question. I'm trying to tell you what my understanding and belief is, and that is that advertising certainly can play a role in influencing brand choice, but I would assume that the decision to smoke had already been made when that brand choice is being considered.

Q. And I'm asking you once somebody has made the decision to start smoking --

A. Yes.

Q. -- Philip Morris believes that advertising can influence what their brand choice will be for their first cigarette; correct?

A. Oh, I don't know -- I don't know the answer to that. I -- I would assume that it could, but

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certainly peer pressure and what was soc -- you know, the social group that the person belonged to, what -- what their friends were smoking, et cetera, would have more of an influence as to what their brand would be.

Q. Okay. Again I move to strike as nonresponsive. I'm asking you if advertising plays a role, not the role, not the sole role.

Does Philip Morris believe that advertising plays a role in influencing people to select the first brand to start smoking once they've made a decision to smoke?

A. I don't know the answer to that.

Q. Who would know the answer on behalf of Philip Morris?

A. I don't know. Maybe someone in the marketing area could give you that answer.

Q. And I take it you did nothing to familiarize yourself with Philip Morris's position on that question.

MR. HOWARD: Objection. You know, Counsel, that the -- the next witness you have is someone to address marketing, advertising and promotion of cigarettes.

Q. Do you remember my question?

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A. No. Why don't you ask it again. I didn't -- I don't remember it.
Q. I take it you did nothing to familiarize yourself with Philip Morris's position on that question.
A. I wouldn't say I've done nothing. I've tried to explain to you what I believe our position to be. You don't want to accept that answer, but I really have tried to be very responsive to your question.
Q. My question -- and I'm going to move to strike that as nonresponsive. My question is: Did -- you did nothing to familiarize yourself with Philip Morris's position on the question of whether advertising influences brand choice for starters; correct?
MR. HOWARD: Objection.
A. I would not say that's correct. I've worked for the company for 28 years. I really do believe I understand our position on -- on many issues. I just don't think that our position necessarily falls into a yes-or-no answer, and that's why I've tried to be responsive in answering your question.
Q. So is it your testimony that Philip Morris as a company hasn't a clue as to whether advertising plays any role whatsoever in influencing brand choice for

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starters?
A. I did not say that. I think you've mischaracterized what I've been saying. I believe that advertising does play a role in influencing brand choice for people who have made the decision to smoke.
Q. I appreciate you sharing your beliefs, but I want to know --
A. And I believe Philip Morris believes that as well.
Q. Is that Philip Morris's position?
A. I -- I believe it is, yes.
Q. Okay. And obviously Philip Morris wants people to choose its brands over competitors' once they have made a decision to choose to smoke; correct?
A. That's correct.
Q. Okay. Whether they choose to smoke at 21 or 25 or 30 or 50, Philip Morris wants them to choose Philip Morris brands when they made -- make the decision to start smoking; right?
A. That is correct.
Q. Okay. And when they're 18, Philip Morris wants them to make the decision to choose Philip Morris brands; right?
A. That is correct.

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Q. And if they make a decision to choose to smoke before they turn 18, all other things being equal, Philip Morris would rather they choose Philip Morris products than a competitor's brand; right?

A. No, that is not correct, because we don't want them to choose any brand, not ours, not a competitor's. We don't want young people to smoke. I can't be clearer about that, and if you really want Philip Morris's position, that's it.

Q. Why?

A. Why? Because we believe that smoking has some inherent risks. There are risk factors associated with smoking, and there are any number of issues that minors should not be making decisions about, smoking being one of them. And we don't want kids to smoke, nor do we want them to have access to our products.

Q. Why do you believe that minors should not be making decisions about smoking?

MR. HOWARD: Objection. She just answered that.

A. For the reason I just stated, because I believe that there are risk factors and I think that minors do not necessarily have all of the information that they need to have to make decisions about smoking as well as many other issues that involve risk, and

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therefore those are decisions best left to adults. And we believe these are adult decisions, and therefore minors shouldn't make them, nor should they have access to the product.

Q. What does Philip Morris believe is -- constitutes all of the information that people should have about smoking before they choose whether or not to smoke?

A. I think people should know all of the risks that can be involved. I think they need to weigh what they see as -- as the -- the -- the pleasure of smoking against what some of the stated risks that have been discussed by others and -- in society and have all of that information and be able to weigh it in a way to make an informed decision. And that is something that should be left to an adult. I think the same thing is true about many other areas.

Q. What are the risks involved that Philip Morris believes youth are not -- should not be weighing until they become adults?

A. Well there -- there obviously have been -- and it's been made -- there's a lot of publicity about the fact that there -- there could be for some people health risks involved in smoking, and if there are, people should be aware of the possibility before they

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make a decision.

Q. Are there health risks in smoking?

A. I don't know that for a fact, but there could be and there -- there could be for some people.

Q. How can somebody make a decision weighing the facts and knowing all of the information if you don't know whether there is a risk --

A. Well --

Q. -- or not?

MR. HOWARD: Objection, calls for speculation, but you can answer.

A. I don't think I make the decision for somebody else, but there certainly is an enormous amount of literature on both sides of the issue out there. There are published warnings. There are discussions. There are Surgeon General's reports. There are reports from other people. There are positions that -- that we've taken.

There's a lot of information publicly available to people on the issue of cigarettes and smoking, and I believe that an adult should read that information, understand it from every perspective and then make a decision for themselves as to what's right for them and weigh what they see as the pleasures against what they see as the risks and then decide whether or not

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they choose to smoke. And if they do choose to smoke as an adult, I believe that should be respected; that choice should be respected. I do not believe it is a choice that a minor should make.

Q. And one of the reasons Philip Morris believes that that is a decision that a minor should not make is because a minor lacks the maturity to fully assess the risks and weigh them against the possible benefits; correct?

A. That -- yes, that's what I believe and that's what Philip Morris believes, I believe.

Q. And Philip Morris believes that that decision should not be made until a person has fully matured to adulthood to be able to make those risks; right?

A. Until a person, yes, is no longer considered a minor and is an adult, that's correct.

Q. Okay. And Philip Morris believes that should -- that the decision should not be made when a person is in transition from adolescence to adulthood; right?

MR. HOWARD: Objection.

A. I -- I guess -- yes, I guess so. I mean, I thought I answered that, but okay.

Q. Earlier you said that in selecting magazines you avoid magazines where readership is greater than 15 percent for people over 21; is that correct?

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MR. HOWARD: Under 21, I believe.

A. Under 21, I think.

Q. Excuse me, under 21.

Why do you pick the figure 21?

A. Well we -- we pick the figure 21 because in many of the programs that we control ourselves, like our direct marketing and our advertising, et cetera, we build in what we see as a cushion between what is the legal age to smoke and what is considered a adult by almost every state in the union except for three that set their -- their minimum age at -- at 19. But as far as the draft is concerned, it's 18. Voting age is 18. So that pretty widely across this country 18 is seen as adulthood.

We want to make sure that our message is not -- and our programs are not drifting down to anyone below the legal age, so where there is no face-to-face transaction where age can be verified, et cetera, we want to make sure that we are not reaching a younger audience, and therefore we build that cushion into the programs that we're responsible for.

Q. That's something Philip Morris has chosen to do; right?

A. That is correct.

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Q. Okay. And --

And Philip Morris has undertaken to build in this cushion to avoid potentially reaching people under the legal age; correct?

A. That is correct.

Q. Okay. And I take it you would agree and Philip Morris would agree that it's difficult to make the distinction between somebody who's a day past their 18th birthday and somebody who's a day away from their 18th birthday in terms of marketing.

A. I think that's correct unless you can verify an age, and -- and obviously at point of sale where carding goes on and age verification goes on, you can tell the difference between a day before and a day after.

Q. I'm talking about marketing. In terms of marketing appeal, it's difficult to fashion a marketing or advertising campaign that appeals to somebody who's 18 years and 1 day that avoids appealing to somebody who's 17 years and 364 days old; right?

MR. HOWARD: Objection as to form. You can answer.

A. I -- I guess so, yes. I -- I would say that's probably --

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Q. Well I'm trying -- I -- I guess I'm trying to understand the cushion. But if you advertise to somebody who's 21 --

A. Uh-huh.

Q. -- and you direct your marketing to somebody who's at least 21 --

A. That's right.

Q. -- you may end up picking up some 20-year-olds in that?

A. That's exactly right.

Q. You may even pick up some 19-year-olds in there?

A. That's right.

Q. But if you -- if you -- if you have the bottom as 21, you're -- you're hoping, your intent is to avoid inadvertently picking up some 17-year-olds or 16-year-olds?

A. That's correct.

Q. Because if you marketed to somebody who was 18, you might inadvertently pick up some 17- and 16-year-olds along the way; right?

A. That's correct.

Q. Okay. You mentioned a Cigarette Advertising Code. That's something that -- that Philip Morris and the industry signed on to back in the early '60s;

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correct?
A. That's correct.
Q. Okay. And Philip Morris has continuously subscribed to the -- to this voluntary Cigarette Advertising Code; correct?
A. Yes.
Q. And always tried to adhere to it; correct?
A. That is correct.
Q. You would agree that marketing -- strike that.
In the Cigarette Advertising Code, it also has this concept of -- of avoiding marketing to anyone under the age of 21; right?
MR. HOWARD: Objection.
A. It has -- it has some provisions about how to conduct marketing activities to avoid reaching anyone under the age of 21, yes.
Q. Okay. And --
And that's based, as far as you know, on this similar concept of a cushion; right?
MR. HOWARD: Objection, lack of foundation.
A. Yeah, I'm -- I'm -- I wasn't there when the code was written so I'm not sure what the thinking was, but I certainly am aware of the code.
Q. You would agree that any marketing that was

http://legacy.library.ucsf.edu/tid/bpp05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

intentionally designed to appeal to 18-year-olds would be a violation of Philip Morris's own adopted policy to market only to those 21 and older; right?

MR. HOWARD: Objection.

A. I think you -- I think you've somewhat misinterpreted what I said. I said when we control the distribution of an item, et cetera, we adhere to that. Now there is marketing because I think marketing is very broad and it includes promotion and point of sale and a lot of forms of advertising where there can be age verification. We believe that the minimum age is the age at which an adult can make the decision to smoke or not and to purchase or not, and we certainly do market our product at point of sale where that age verification can take place. Where there is no age verification, we try to build that cushion in through our direct-mail programs; when we sampled, which we no longer do, by making sure that the recipient of the sample was 21 years of age and a smoker, et cetera.

So we took those precautions in the programs that we personally implemented where there was no direct proof-of-age carding required to build a cushion in, but that does not mean that we have not marketed to legal-age smokers, and those are 18 and

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

above.
Q. Perhaps I'm not using the right term, and I apologize. When you place an outdoor billboard, there's no age verification as to who can see that billboard; right?
A. That's correct.
Q. Okay. Actually one of Philip Morris's policies that it -- that it has voluntarily undertaken is to avoid placing billboards within 500 feet of schools; correct?
A. That's part of a voluntary code, that's correct.
Q. Why is that?
A. Again, one, because of our stated public policy of not either targeting or encouraging young people to smoke in any way; and secondly, I think I made this point when I talked about advertising in general, that you tend to place your advertising where you think you're going to reach the largest number of your -- your own potential consumers, which in our case would be adult smokers.
Q. You used the phrase "not targeting." You agree that it is possible for an advertising campaign to target a particular age segment; correct?
A. I believe that it is possible for an advertising

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

campaign to have more appeal to one age segment than another, yes.

Q. Okay. And I want to go back and clarify this issue of the cushion because I -- maybe we weren't talking the same language.

I'm talking about advertising campaigns and their appeal. Is it your testimony that Philip Morris avoids undertaking any advertising campaigns that -- that have appeal to those under 21?

A. I think it's hard to -- to draw that -- that distinction. All I can say to that point is that we believe that adults of legal age can be marketed to in a variety of ways, and the fact that there might be appeal of advertising to someone who is of legal age, in my opinion and I think in the company's opinion, would not be problematic.

But then it's a matter of how you implement, how you place that advertising, how you choose the vehicles that you advertise in and how responsibly you market your product. And when it comes to the way we implement our programs and the responsibility that we feel for the way we implement them, we build in some safeguards and cushions.

But I think it would be wrong to indicate that we don't believe that 18-year-olds have the right to

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Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

choose to smoke as adults, and that if they make that choice, we are marketing our product to them.

Q. Let me see if I can ask my question a little bit differently.

Philip Morris spends millions of dollars a year on advertising; right?

A. Yes, we do.

Q. Billboards, magazines?

A. Yes.

Q. Displays on buses, things like that?

A. In some places we use buses.

Q. And Philip Morris hires advertising agencies to help design the advertising campaigns to be used in the -- these advertising?

A. We work with agencies, that's correct.

Q. Okay. And one of the things that these agencies try to do is design ads that would be most appealing to potential customers; right?

A. Well I think it's not quite that simplistic. I think what the agency does is to try to position the product to communicate what that product's attributes are, what it tastes like, what unique features it might have in packaging, filter, et cetera, and then yes, to position it in a way that it will appeal to the adult smokers that it is trying to reach.

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Q. Okay. And my question now is: In packaging the product and to try and make it appeal to adult smokers, is it Philip Morris policy to try to design its advertising campaigns so as not to appeal to those under 21?

A. We certainly don't design our advertising campaigns to appeal to underage smokers. We consider adult smokers, which are 18 years of age and above, as legal-age smokers, and if there is appeal of our product to a legal-age smoker, we don't see anything wrong with that. That is perfectly acceptable.

What we don't do is try to appeal to underage smokers or underage people.

Q. You agree that if you design an advertising campaign to appeal to somebody who's 21 or older, that it might also appeal to somebody who's 20; right?

A. Yes, and it might appeal to somebody, as you said before, 19 or 18.

Q. Right. But if you design it to appeal to somebody who's 21 or older, it is less likely to appeal to a 15- or 16-year-old than if you design it to appeal to an 18-year-old; correct?

MR. HOWARD: Objection.

A. I -- I think you're -- you're cutting the loaf

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

very thin. I mean, you -- you may be right. I'm not sure that it falls quite so precisely into the categories that you're outlining.

I think my response to you would be that we do not design advertising nor do we want our advertising to appeal to anyone who is underage, nor do we execute our marketing programs or our advertising in a way that, one, it -- we don't want it to appeal to them; two, we -- we really don't want to put it in front of them. We're not interested in attracting them. We're not interested in communicating with them. We're not interested in having them see our advertising because we don't want them to smoke, we don't want them to buy our product, and we don't want to reach them in any way. On the contrary, we want to deny them access.

So we would not design anything that was intended for an -- an underage market. Now whether that's 18, 19, 20, 21 or 25, in what the primary appeal of the advertising is I think is irrelevant. The important thing is that we don't design it to appeal to an underage audience.

Q. Okay. My question, though, is whether it is Philip Morris policy to attempt in its advertising campaigns to build in a -- that cushion that we

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Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

talked about earlier by -- by designing its advertising to appeal to those 21 and older.

A. I don't believe you can build the cushion into the ad. I think you can build the cushion into where you run the ad and how you run and implement your programs that take their imagery from the ad. So I don't think the cushion gets built into the ad. I think the cushion gets built into the execution and the practices.

Q. So there is no Philip Morris policy to attempt to design advertising campaigns to appeal to only those 21 and over?

MR. HOWARD: Objection.

A. There is a real effort on behalf of Philip Morris in its advertising to design advertising that will appeal only to adults.

Q. And by "adults" now for this purpose, Philip Morris is defining that as 18 and older?

A. That's correct.

Q. How does one design an ad to appeal to somebody who is 18 but not to somebody who is 17?

A. I -- I don't know that you do, and I think that's where we're having a semantic difference here. I don't think you design an ad to appeal to an 18, 19 or -- you design a campaign that has broad

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Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

appeal, and our advertising campaigns have had broad appeal among adult smokers of many ages, from 18 to 55 to 60. We have had campaigns that have had that appeal.

The issue is how have we implemented our program and who have we tried to attract with our advertising and our promotional programs, and there I would submit that we are very careful to build that cushion in to make sure that we're not reaching that person that you were talking about that's 17 years and 11 months old as opposed to the one that is 18 years and 1 month old. So that's how we address advertising and promotion.

Q. Is it your testimony that Philip Morris's advertising is designed to universally appeal to every adult smoker as opposed to targeting segments of the -- the adult smoking population?

A. I -- it is my testimony that our advertising is designed to -- not to -- for every campaign to appeal to every adult smoker, but certainly designed to appeal to the adult smoker who makes a certain type of product choice; in the case of Marlboro, someone who wants a flavorful, quality, cork-tipped, stronger, more satisfying cigarette; in the case of Merit, the smoker who chooses a lighter, low-tar

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

cigarette.

So it's a matter of the product positioning and then creating ad -- advertising that will have appeal and communicating that to the -- the person who makes that product choice.

Q. Your --

You used four phrases to refer to Marlboro: Flavorful, quality, cork tipped, stronger, more satisfying. Maybe that's five.

A. Uh-huh.

Q. And you would --

You would consider those product attributes; right?

A. I would.

Q. Okay. And it's your testimony that Philip Morris's advertising is intended to emphasize the product attributes; right?

A. I -- yes, it is.

Q. Okay. How does a picture of a cowboy with the word "Marlboro" convey anything about the flavor, the quality, the cork-tipped aspect of -- of the Marlboro, that it's stronger or more satisfying?

A. Oh, I think the -- the positioning of the brand, the use of the western scenery, Marlboro country, the cowboy and what he stands for, the fact that we show

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Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

the product in the ad with the flip-top box open and the cork tip coming out of the pack, the red tones in the ad all I think reinforce the product message and the product positioning of Marlboro.

If you looked at a Merit ad, you would see, you know, softer blue tones, more copy, a different kind of a positioning that I think would appeal to an audience that is looking for a different kind of cigarette.

Q. I'm talking about the Marlboro ads where there's no picture of any cigarettes or any cigarette box, just the word "Marlboro" and a -- and a picture of a cowboy.

A. Oh, yes, but, you know, Marlboro advertising has been running for many, many years, and you're -- you're saying there might be one ad where there's just the word "Marlboro" and the cowboy, but there are any number of other ads in the course of the year or the years where the product has been shown in the cowboy's hand or in the box or where you would see the cork tip in the product, et cetera, so it's --

Q. It's Philip Morris's --

A. -- part of the campaign.

Q. I'm sorry.

It's Philip Morris's position that increases in

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Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

taxes do not decrease the number of youths taking up smoking; correct?

MR. HOWARD: Objection. Could I just have that read back or take a look at it for a moment.

Do you need that read back?

THE WITNESS: Yeah.

MR. HOWARD: I object.

Q. It's Philip Morris's position that increases in taxes do not decrease the number of youths taking up smoking; correct?

MR. HOWARD: This is -- go ahead if you know.

A. I -- I don't know if it would decrease the number of youths that smoke or not smoke, but it certainly is Philip Morris's position that excise taxes are regressive and single out one group of smokers to be penalized and to be overtaxed and -- and we think they're unfair. So I think -- I think there are many ways to ensure that young people don't smoke, and denying them access is probably much more effective than raising the price and -- and -- and imposing an excise tax on all smokers.

Q. My question is specifically whether it is Philip Morris's position that it has been proven that raising cigarette taxes does not deter anyone,

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Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

including underage smokers, from smoking.
A. I -- I don't know how to answer that question. I don't know if it's -- if we have a position. I can tell you what our position is on excise taxes and how we feel about them, and obviously we think that they're unfair and that it is not an effective way to impact the issue of youth smoking.
Q. I'm going to show you what's been previously marked as Plaintiffs' Exhibit 271.
MR. GORDON: I apologize, I only have one copy. If you need another one, we can get the court reporter's copy. Do you need another one?
MR. HOWARD: No, thank you.
MR. GORDON: Okay.
Q. This is a --
A. Uh-huh.
Q. -- three-page document produced by Philip Morris bearing Bates stamp number 2046573757 through 3759.
Have you seen this document before?
A. Yes, I have.
Q. Okay. In fact, did you draft this or have a role in its drafting?
A. I certainly saw it when it was drafted. I -- I did not draft it.
Q. And this was a document that was intended for

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

public dissemination; correct?

A. This is a core message -- message track that is made basically for internal use, to -- to out -- outline messages that we would deliver, not necessarily be sent to anybody.

Q. When you say for messages to deliver, you mean this is the -- essentially the briefing --

A. That's correct.

Q. -- material for Philip Morris people so that they know what the Philip Morris position is when they speak publicly?

A. That's -- that's correct.

Q. Okay. And I want to direct your attention to the second page, the second bullet point on the -- on the page in the middle where it says, quote, "It has been proven that raising cigarette taxes does not deter anyone - including underage smokers - from smoking because smokers will find other ways to buy their cigarettes for less money such as crossing national/state" bound -- "and local borders for lower taxes and buying cigarettes from Indian reservations, military bases and bootleggers." Do you see that?

A. Yes, I do.

Q. Okay. Does that refresh your recollection as to whether it's the official Philip Morris position that

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raising cigarette taxes does not deter underage smokers from smoking?

MR. HOWARD: I'm going to make an objection as to form.

A. Again I don't believe that that's what this document says. I think this document comes much closer to saying what I said before, which is that we think that cigarette taxes, excise taxes, are punitive and we do believe that they are a form of social engineering and that overall they are not a deterrent. They -- they only serve to put a burden on a group of people who choose to smoke, and therefore on that basis we fight them.

But I don't -- I don't see that we say -- we say it's an inappropriate way, and that -- I think that's what I answered your question with before.

Q. In fact, internally Philip Morris acknowledges that a -- that when you raise excise taxes, it reduces teenage smoking; correct?

MR. HOWARD: Objection, lack of foundation.

A. I don't know that we think it will or it won't. We think that excise taxes are a regressive and unfair form of taxation.

Q. Okay. My question is whether Philip Morris

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Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

internally acknowledges that raising excise taxes decreases teenage smoking, and your -- your testimony -- I want to make it clear. Your testimony is you don't know what Philip Morris's internal position is?

A. I don't know that we have that position. I can tell you we -- what we do believe will reduce teenage smoking, and that is denying them access to the product, --

Q. Okay.

A. -- education, community involvement, law enforcement, any number of things that don't involve social engineering.

Q. Thank you. I move to strike as nonresponsive.

I'm going to show you what's been marked as Exhibit 356. This is a document produced by Philip Morris bearing Bates stamp number 2045259412 through 9415, a mem -- interoffice correspondence dated September 17, 1981 from Myron Johnston to Harry Daniel entitled "Teenage Smoking and the Federal Excise Tax on Cigarettes," and it is marked "CONFIDENTIAL: MINNESOTA TOBACCO LITIGATION."

A. Uh-huh.

Q. Okay. And I want to direct your attention to page three of this document and the last paragraph on

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

page three where it says, quote, "In any event, and for whatever reason, it is clear that price has a pronounced effect on the smoking prevalence of teenagers, and that the goals of reducing teenage smoking and balancing the budget would both be served by increasing the Federal excise tax on cigarettes." Do you see that?

A. Yes, I do.

Q. Okay. And I want to turn your -- direct your attention to the next page, page four, very last paragraph in the middle where it says, quote, "Given a price elasticity of minus 0.4 for total cigarette sales and minus 1.2 for teenage smoking participation, a 25 percent increase in the excise tax could be expected to reduce industry sales to about 1.2 percent below what would be expected in the absence of such an increase, and to reduce the number of teenage smokers to 3.5 to 4 percent below the number that would otherwise be expected." Do you see that?

A. I do.

Q. Is this the first time you've seen this document or heard the information that I've just read to you?

MR. HOWARD: Objection, compound.

A. I believe I have seen this document.

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Q. Now I'd like to show you what's been previously marked as Plaintiffs' Exhibit 688. This is a document bearing -- produced by Philip Morris bearing Bates stamp number 2022216179 through 6180, an interoffice correspondence dated September 3rd, 1987 from Myron Johnston to Jon Zoler entitled "Handling an excise tax increase."

And I want to direct your attention --

MR. GORDON: Did I give the Bates numbers on that?

THE REPORTER: Yes.

MR. GORDON: Okay.

Q. I just want to direct your attention to the second paragraph where it says, quote, "You may recall from the article I sent you that Jeffrey Harris of MIT calculated, on the basis of the Lewin and Coate data, ... the 1982-83 round of price increases caused two million adults to quit smoking and prevented 600,000 teenagers from starting to smoke. Those teenagers are now 18 to 21 years old, and since about 70 percent of 18 to 21 year-olds and 35 percent of older smokers smoke a PM brand, this means that 700,000 of those adult quitters had been PM smokers and 420,000 of the non-starters would have been PM smokers. Thus, if Harris is right, we were

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Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

hit disproportionately hard. We don't need to have" this "happen again."

Do you see that?

A. I do.

Q. Is this the first time you've seen this document?

A. Yes, I think it is. I don't recall this document at all.

Q. So have you ever heard anyone discussing the impact that excise tax increases have in terms of Philip Morris's share of starters?

A. I -- I have -- no, I have not heard anyone internally have this kind of a discussion at all.

Q. And this is the first time that you've ever seen anyone attempt to calculate the number of smoker -- would-be smokers that Philip Morris lost because of an excise tax increase; --

MR. HOWARD: Objection.

Q. -- correct?

A. It is the first time that I have seen information about the number of teenage smokers that we have lost because of an excise tax.

Q. And Philip Morris has never publicly taken the position that an increase in the federal excise tax would reduce teenage smoking initiation; correct?

http://legacy.library.ucsf.edu/tid/bpp05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

A. Not to -- not to my knowledge and not since I've been involved in dealing with the issue of excise taxes.

Q. Okay. Philip Morris --

Philip Morris believes that it's -- that it is important to know as much as possible about teenage smoking patterns and attitudes; correct?

MR. HOWARD: Objection.

A. Can you define for me "teenage."

Q. Well how do you define "teenage"?

A. Well "teenage" can start with the age of 13, or we could be talking about smokers, which is what Philip Morris is interested in, adult smokers, so then we'd be talking about 18- and 19-year-olds. And yes, we're interested in 18- and 19-year-olds. No, we're not interested in 13- through 18-year-olds.

Q. How about 15-, 16- and 17-year-olds?

A. Not -- not -- no, we are not interested in them as a market or as smokers except to hope that they would not and that they would stop and that we could develop some programs to get them to stop if they are.

Q. So Philip Morris is not interested in teenage smoking patterns for teenagers under 18?

A. Not for marketing purposes, no, not at all.

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Q. Okay. And you're not interested even though today's teenager is tomorrow's regular customer; is that right?

A. Not from the standpoint of marketing to them. Obviously as any company we might be interested in demographic patterns, what the population base looks like for projections, business projections, et cetera, but from the standpoint of having information to market to anyone under the legal age to smoke, we are absolutely not interested.

Q. Okay. The smoking patterns of teenagers are particularly important to Philip Morris, are they not?

MR. HOWARD: Objection.

A. Could you again define what -- what group you're talking about.

Q. 15- -- let's say 15- to 19-year-olds.

MR. HOWARD: Then I object because you're packaging legal smokers together with minors.

A. I will again answer as I did before. Philip Morris is very interested in 18- to 21-year-olds and 21- to 25-year-olds and 25- to 35-year-olds, et cetera. We are not interested in underage smokers except from the standpoint of how we can develop programs to ensure that we deny them access.

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Q. I'm going to show you what's been previously marked as Exhibit 358, a document produced by Philip Morris bearing Bates stamp number 1003636640 through 6688, a Philip Morris USA Research Center document entitled "Young Smokers, Prevalence, Trends, Implications and Related Demographic Trends," written by Myron Johnston, dated March 31, 1981.

A. Uh-huh.

Q. Okay. And I direct your attention to the summary page, which is page three.

A. I see it.

Q. The very first line, quote, "It is important to know as much as possible about teenage smoking patterns and attitudes. Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens." Do you see that?

A. I do.

Q. Do you agree with all that?

A. I don't.

Q. Why not?

A. Because I think that we would only be interested in, as I say, patterns of -- of demographics from the standpoint of projecting what a potential audience might look like, what size it would be, what the

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demographic patterns are going to be, not smoking behavior of underage people because we're not interested in marketing to them or knowing what their choices are. Our interest in underage people is to get them not to smoke.

Q. So Philip Morris has no interest in knowing what the choice of 15- and 16- and 17-year-old smokers is when they choose to smoke?

A. Not -- not to my knowledge and not -- not in anything that I've been involved in -- in doing for Philip Morris.

Q. Well I want to --

I want you to go beyond your personal experience and tell me what Philip Morris's position is.

A. Well I can tell you --

Q. Does -- is it --

Is it your testimony as the spokesperson for Philip Morris that Philip Morris has no interest in knowing what 15-, 16- and 17-year-olds are smoking?

MR. HOWARD: Objection, asked and answered. You may answer again.

A. That is correct.

Q. Okay. And Philip Morris has no interest in knowing anything about the smoking patterns or prevalence of those under 18; is that correct?

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Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

MR. HOWARD: Objection, asked and answered.

A. Our interest in knowing anything about what is happening with the youth market is only to ensure that we support the appropriate programs to deny them access to our products, and beyond that our focus is on 18-year-olds and older from the standpoint of marketing our cigarettes.

MR. NUNLEY: Mr. Gordon, the next witness just called and wondered timing. Do you have any idea? Should I tell him to come at 4:00, 4:30?

MR. GORDON: Let's say 4:15.

Q. Have you ever heard of the Opinion Research Corporation?

A. I may have.

Q. I'll show you what's been previously marked as Exhibit 350, a document produced by Philip Morris bearing Bates stamp number 2022240887, a document on the letterhead of Opinion Research Corporation dated December 21st, 1961 to Dr. W. L. Dunn, Jr. --

A. Uh-huh.

Q. -- from apparently Shoi Dickinson.

A. That's what it looks like, yes.

Q. Does that refresh your recollection as to something called the Opinion Research Corporation?

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

A. I don't believe I've -- I've ever seen this and this is not a company that I am aware of that we're working with or have worked with since I've been involved with Philip Morris, but I -- I may have heard of them.

Q. Okay. And in this document they're talking about offering a new research service -- service studying the teenage market; correct?

A. That's what the document says.

Q. Okay. And in fact, Philip Morris has hired Opinion Research Corporation on several occasions to perform studies of the teenage market; correct?

MR. HOWARD: Objection, no foundation.

A. Again I -- I don't see any age stipulation in this document, so I'm not sure what the project was about.

Q. Okay.

A. And obviously I wasn't with Philip Morris at the time.

Q. So whether or not Philip Morris ever hired Opinion Research Corporation to -- to do studies of the teenage market, you don't know?

A. I don't know.

Q. Okay. I'll show you what's been marked as Exhibit 361, a document bearing Bates stamp number

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

1000338644 through 38671 entitled "Special Report Number 248: MARKET POTENTIAL OF A HEALTH CIGARETTE." And I just want to direct your attention to page 12.

MR. HOWARD: Let me just tell the witness that you should feel free to read as much of this document as you feel you need to to put any questions into context.

A. Page 12?

Q. Yeah, on page 12 in the middle of the middle paragraph, the sentence that says "This tendency for young smokers to select a brand to be like their friends was also noted in a November 1961 study done for us by Opinion Research Corporation." Do you see that?

A. Yes, I do.

Q. Okay. Were you aware of a 1961 study done for Philip Morris by Opinion Research Corporation?

A. No, I was not.

Q. Okay. Have you heard --

MR. HOWARD: To clarify, you were asking about a November 1961 study in that last question, --

MR. GORDON: Right.

MR. HOWARD: -- Mr. Gordon?

MR. GORDON: Right.

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Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Q. Are you aware of any study done by Opinion Research Corporation?

A. No, I am not.

MR. HOWARD: I just think it's disingenuous to put that question in front of her asking about November having previously shown a proposal in December of 1961 and suggest they're connected.

MR. GORDON: Speaking objections are not permitted under the case management order, Mr. Howard.

MR. HOWARD: I'm trying to clarify as an officer of the court a --

MR. GORDON: No.

MR. HOWARD: -- misrepresentation I believe you made on the record. There was no question pending. It wasn't a speaking objection to prompt the witness or anything else. I was just --

MR. GORDON: Mr. Howard, you're entitled to make an objection to the form of the question or instruct to answer or not for privilege. You are not entitled to make those kind of speeches, and if you persist in doing it, we're going to -- we're going to call the court. That is absolutely not permitted under the court's order.

You have -- you have an opportunity -- you will

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have an opportunity to conduct a direct examination of this witness, and any questioning you feel that is unfair, you can clarify it and ask what you consider to be fair questions, but you do not have the right to comment on my questioning and what you consider to be unfairness. If you want to object to the form of my questions, you go ahead. If you believe a question calls for privilege, you instruct not to answer; otherwise, you follow the case management order.

BY MR. GORDON:

Q. I want to show you what's been marked as Exhibit 680.

MR. NUNLEY: Don't worry. They didn't follow it when defending our depositions.

Q. You ever heard of Gilbert Youth Research? I'll back up. Let me note this for the record.

I'm showing you what's been marked as Exhibit 680, a document bearing Bates stamp number 1005040495 through 515, a document produced by Philip Morris entitled "TEEN-AGE CIGARETTE PURCHASING AND SMOKING HABITS IN THE U.S.A., 1963."

You ever heard of Gilbert Youth Research?

A. No, I have not.

Q. Okay. I direct your attention to what is page

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three of this document, but it's -- the Bates number ends in 499.

A. I see it.

Q. Okay. And the three -- the --

Do you see where under "OBJECTIVES OF THE STUDY" it says "To determine the extent of smoking among young people 13 through 18 years old"? Do you see that?

A. I do.

Q. Okay. Is this the first time you've seen this Gilbert Youth Research --

A. Yes.

Q. -- study?

MR. HOWARD: I'd like to give the witness the opportunity to review the entire document and not just the portion to which she's been directed.

MR. GORDON: Sure.

Q. Do you want to do that?

A. Yes.

(Witness reviews Plaintiffs' Exhibit 680.)

A. It's a little difficult to read.

MR. NUNLEY: While the witness is reviewing this, could we -- can I ask for just the approximate running time?

THE VIDEOGRAPHER: I'll give it to you in

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about five minutes.

MR. NUNLEY: Okay. That's fine. No problem.

A. I've never seen this document before.

Q. Any idea how it found its way into Philip Morris's files?

A. How it found its way? I don't know. I mean, I wasn't -- I didn't work for Philip Morris in 1963, and to me, it looks like -- you know what? I think I have actually seen this document now that I look at it more closely. This -- and read the -- the addressee on -- on the -- on the letter. This was obviously directed to Louis Risman, who is president of the National Automatic Merchandising Association, which would have been a vendor, a vending machine operator, and obviously this study was something that was done, I would assume, for the vending community, and someone must have sent it to us.

Q. Do you know if Philip Morris did anything to assist the National Automatic Merchandising Association with respect to its study?

A. I -- I would not know the answer to that, --

Q. Okay.

A. -- 1963.

MR. GORDON: Could I have the court

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reporter mark this, please.

THE REPORTER: Off the record, please, to change tape.

(Discussion off the record.)

(Plaintiffs' Exhibit 1306 was marked for identification.)

BY MR. GORDON:

Q. Showing you Exhibit 1306, a document produced by Philip Morris bearing Bates stamp number 1005040524, a letter on the National Automatic Merchandising Association letterhead to James Boling at Philip Morris Incorporated dated March 21, 1963, do you see this?

A. I do.

Q. And in this the director of statistics, research and marketing for the National Association -- Automatic Merchandising Association is writing to Jim Boling about a luncheon discussion. Do you see that?

A. I can -- yeah, I can just about make that out.

Q. And he's asking for a member of the Philip Morris market research department to sit in on an upcoming meeting?

A. Counsel, I'm really -- I'm sorry, I'm having a real problem reading this, but --

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Q. In that first paragraph do you see "Per our luncheon discussion, I am looking forward to our 2:30 p.m. meeting on Tuesday, and hope that it will be possible to have a member of your market research department" --

A. Yes, I see that.

Q. -- "sit in"?

Okay. And it discusses his threefold interest: Number one, "To verify that I have uncovered all the literature on young people"; two, "To discuss the merits of the various outside survey firms"; and three, "To discover whether the activities of my new department can be useful to you." Do you see that?

A. I do.

Q. Okay. And this is dated --

A. March 21st, 1963.

Q. Right. A little less than five months before the Gilbert Youth Research survey is sent to the National Automatic Merchandising Association?

MR. HOWARD: I object to this question.

A. I see that.

Q. Do you have any knowledge of whether Philip Morris provided the assistance that the National Automatic Merchandising Association was asking for?

MR. HOWARD: Objection as to form.

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A. No, I -- I really would not have any knowledge of that.
Q. Okay. You're familiar with the Philip Morris POL National Roster, are you not?
A. I'm familiar, yes, with the fact that we do a POL, yes.
Q. And what does that stand for?
A. That's -- I don't know. I don't know what the actual letters stand for.
Q. Have you ever heard the phrase "Product Opinion Laboratory"?
A. That's right. I know it's -- I thought it's testing, but I didn't know what the actual letters stand for.
Q. It's a marketing research?
A. Right, right.
Q. And it's owned by Philip Morris; right?
A. To my knowledge, it is, yes.
Q. Okay. And Philip Morris recruits people to be on its panel and to periodically respond to surveys; correct?
A. That's my understanding.
Q. Okay. And I'm going to show you what's been marked as Exhibit 146, a document bearing Bates stamp number 1000306237 through 6239, a document produced

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by Philip Morris dated May 23rd, 1969 from M. E. Johnston to Dr. R. B. Seligman, and the subject is "Marlboro Market Penetration by Age and Sex."

A. Uh-huh.

Q. Okay. And do you see that this document is summarizing data for the first quarter of 1968 based on the POL National Roster? Right?

A. Yes.

Q. So this is summarizing data as to Marlboro's market penetration based on Marlboro's -- or excuse me, based on Philip Morris's own marketing research company; right?

A. It appears to.

Q. Take a -- turn to page seven, if you would. Or strike that. The second page.

What's the first age that is shown there on this graph?

MR. HOWARD: Object to this question. This thing is hardly legible.

A. I'm not sure where I'm supposed to see an age.

Q. If you look on the lower part of this graph, you see it says "SINGLE YEARS OF AGE." Do you see that?

A. Yes, down here at the bottom.

Q. Okay. What's the lowest age?

MR. HOWARD: Objection.

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A. I -- I think it's 15. It looks like it's 15.
Q. Okay. And do you see the percent along that left-hand column?
A. Not legible on my copy.
Q. Well can you see the line that's marked -- you can't see the word "PERCENT" in the upper left-hand corner?
A. I see the word "PERCENT," but I can't -- I -- except for the -- the three at the very top, nothing else is legible.
Q. You can't read the 30 and the 25?
A. 30 and twenty -- no.
Q. I wonder if you have a worse copy than I do.
A. I can't.
Q. That doesn't look like a 25 to you?
A. It didn't.
MR. HOWARD: Objection.
A. It did -- really did not.
Q. Okay. And do you see the two lines that follow first a little bit up and then basically trend downward?
A. Yeah.
Q. Okay. And one of --
One of those lines is apparently for male and one is for female; correct?

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MR. HOWARD: Object, lack of foundation for these questions.

A. I have -- I really have no idea. I mean, it's -- this is an impossible document to read. I don't know what its significance is, and I don't know what this chart is telling me.

Q. Well the fact of the matter is the significance is that your own Product Opinion Laboratory was doing -- was conducting surveys to determine Marlboro's market penetration with 15-, 16- and 17-year-olds; right?

MR. HOWARD: Objection, lack of foundation.

A. I don't know that for a fact. I mean, perhaps, but I don't -- I don't know that for a fact.

Q. Would it surprise you if that was the fact?

A. Would it surprise me? It -- it might, yes. I mean, I -- I know that our research is limited and has been for all the years that I've been involved to people 18 years of age and older, and I would be surprised that we were testing anyone younger.

Q. Would it disturb you?

A. Yes, it would quite frankly.

MR. GORDON: Can I have that marked, please.

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(Plaintiffs' Exhibit 1307 was marked for identification.)

(Discussion off the stenographic record.)

BY MR. GORDON:

Q. Showing you Exhibit 1307, a document produced by Philip Morris bearing -- bearing Bates stamp number 2023066583 through 6592, a document dated December 16, 1968 from Myron Johnston to Dr. R. B. Seligman entitled "Cigarette Smoking Patterns from the POL National Roster," have you seen this document before?

A. I'd have to go through more of the document to know if I had or not.

MR. HOWARD: Why don't you take your time and do that.

(Witness reviews Plaintiffs' Exhibit 1307.)

A. I don't believe I've seen this document before.

Q. You would agree that this is a summary of Philip Morris's own POL participants; correct?

MR. HOWARD: Objection, lack of foundation.

A. It -- it could be. I -- as I say, I have not seen this document before.

Q. Okay. And if you turn to the fourth page of the

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document where it says "TABLE 1, TYPE OF CIGARETTE SMOKED BY AGE," do you see that?

A. Yes, I do.

Q. Okay. What's the first age-group in the male category?

A. Under 18.

Q. And how about the female category? What's the first age-group?

A. Under 18.

Q. Okay. And it summarizes data for both males and females under 18; correct?

A. It appears to, yes.

MR. HOWARD: Objection, lack of foundation. Go ahead.

A. It appears to.

Q. And that's from Philip Morris's own Product Opinion Laboratory; right?

MR. HOWARD: Objection, lack of foundation.

A. It appears to be.

Q. Yeah. I'd like to show you what's been marked as Exhibit 147, a document produced by Philip Morris bearing Bates stamp number 1000719422 through 19423, a letter dated January 4, 1971 from H. Wakeham, Vice President, Corporate Research and Development, to

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Dr. Paul F. Lazarsfeld, Department of Sociology, Columbia University, New York.

In particular I want to direct your attention to the first paragraph.

(Witness reviews Plaintiffs' Exhibit 147.)

Q. This is an agreement on the part of Philip Morris to fund a study by Dr. Lazarsfeld of several groups, including adolescents and the parents of adolescents, where the main purpose is to investigate the motivational conflicts engendered by the ongoing discussion about cigarette smoking; correct?

A. Correct.

Q. Do you know why Philip Morris was willing to -- to fund research into the motivational conflicts engendered by the ongoing discussion about cigarette smoking involving interviews with adolescents?

A. Well I -- I don't know because I've not -- never seen this document before and I was not a party to this study, but the fact that they're talking to adolescents and their parents certainly was consistent with our being involved in developing programs adhering to the Advertising Code, et cetera. I mean, I don't see this as a document or a study that would have been used in any way to market our products, and I think that's really the

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basis of what we're talking about here, what our marketing practices were and are and what information we were gathering to market our product, and we certainly were not using information about young people to market.

Q. It was just academic curiosity?

MR. HOWARD: Objection.

A. I don't know what it was because, as I said, I -- I had never seen this before and I was not a party to this study, so I don't know why it was called for. But it certainly was not to use as a marketing instrument.

Q. Well how do you know if you don't know anything about the study?

A. Well because I know in 1971 I was with Philip Morris already and I know that -- what our practices were and I know how we conducted our business and I know why I've always been proud to work for the company, because of the way we have conducted our business and because of our policies and practices.

Q. But you know nothing about this study or why it was commissioned.

A. I do not. I've -- I've never seen this before.

Q. And you know nothing about how any information from this study might have been used by others at the

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company; right?
A. No, with certainty, I don't. I only know what the company position was, what I interpreted and how I interpreted that position and how I and my colleagues did our business.
Q. I'd like to show you what's been marked as Exhibit 681, a document produced by Philip Morris bearing Bates stamp number 2041761791, a document dated May 18, 1973 from marketing research department, "Subject: Incidence of Smoking Cigarettes."
Let me direct your attention, first of all, to the list of people to whom this --
A. Uh-huh.
Q. -- document went. You're one of the people; right?
A. Yes, I am.
Q. Okay. And this discusses a March 1973 Opinion Research Corporation national probability sample; right?
A. That's what it is, yes.
Q. Okay. And the --
What's the age-group shown in the incidence overall and by sex on that bottom line?
A. 12 to 17.

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Q. Uh-huh. And what is the incidence percentage for males 12 to 17?
A. Average consumption -- well 13 -- 13 percent.
Q. Well isn't that the total?
A. Oh, males, sorry, 14 percent.
Q. So 14 percent of males 12 to 17 were smoking and 13 percent of females 12 to 17 were smoking according to this report; right?
A. That's --
MR. HOWARD: Objection, --
Q. And this --
MR. HOWARD: -- mischaracterization.
Q. This document was marked "CONFIDENTIAL"; right?
A. It is.
Q. Okay. This is --
MR. HOWARD: Objection.
Q. This is not a public document, is it?
A. I don't see --
MR. HOWARD: Objection.
A. -- where it's marked "CONFIDENTIAL."
Q. Along the side.
A. Oh.
MR. HOWARD: Objection.
A. There is a stamp that says "CONFIDENTIAL: MINNESOTA TOBACCO LITIGATION."

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Q. Yeah. Well this -- this wasn't a public document. This wasn't published some -- in -- in a magazine or a newspaper, was it?

MR. HOWARD: Objection, lack of foundation.

A. Not to my knowledge.

Q. So in March 1970 -- or excuse me.

In May 1973 when you got a copy of this document, what did you understand was the purpose of Opinion Research Corporation's national probability sample of incidence of smoking for 12- to 17-year-olds?

A. I -- I -- I can't tell you what I -- what I thought at the time. All I can tell you is that again I understood what our marketing practices were. I understood what our policies were, and it -- it was not information that we used in any way to put together marketing programs.

Q. Does this, by the way, reflect -- refresh your recollection as to whether you'd ever heard of Opinion Research Corporation before today?

A. I -- I -- I -- I said even when you asked me that I thought I may have heard of them. I had never seen that document. I was not aware of the study having been commissioned, but I thought I'd heard of

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the company, and obviously I did hear of the company.

Q. Do you remember being concerned in 1973 to learn that 13 percent of 12- to 17-year-olds were smoking?

A. I -- I can't tell you with any honesty what I was thinking in 1973. I don't remember my reaction to this particular document.

Q. Does it bother you today that Philip Morris was studying this issue?

A. I -- I would prefer that we did -- did not even look at the incidence, but the fact is I am confident in 28 years of being with Philip Morris that we have acted responsibly in the way we have conducted ourselves in our marketing practices and our commitment to not market to youth and in fact to continually develop more and more effective proactive programs to deal with the issue of youth smoking. So that would be my answer to that.

Q. You've heard of the Roper Organization, haven't you?

A. I have.

Q. It's done marketing research for Philip Morris on a number of occasions?

A. Yes, it has.

Q. I'd like to show you what's been previously

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marked as Exhibit 352, a document produced by Philip Morris in discovery bearing Bates stamp number 2022245801 through 5823, a document -- well the cover page is dated July 25th, 1974. It's from marketing research department to a distribution list, and it's entitled "Highlights of Special Roper Study on Young Smokers."

A. Uh-huh.

Q. Do you see that?

A. I do.

Q. Okay. You were one of the people who got this document back in 1974; correct?

A. I did.

Q. Okay. And what's the --

If you turn to the second page -- page, what's the title of the document?

A. "THE NEW COMPETITION FOR MARLBORO'S FRANCHISE."

Q. And who wrote it according to this?

A. Marketing research department.

Q. Of what?

A. Of Philip Morris.

Q. Okay. Now turn to the second page of the -- of the -- the -- the report itself, the third page of the document. Do you see the section that says "What Was Done"?

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A. Yes, I do.
Q. Yeah. And what --
And what does it say there?
A. It says "The Roper Organization was commissioned to undertake the study summarized here, with the intention of probing the dynamics of the market among smokers below the age of 24. (This was not the 'usual' sample of 18 to 24; in this study, no lower age limit was set.)"
Q. Why was the Roper Organization commissioned to undertake a study to probe the dynamics of smokers with no lower age limit?
A. I'm not sure what the answer to that would be. I -- I -- not having commissioned the study or been part of it, I received the report, but --
Q. Did you ever review the report itself from the Roper Organization?
A. I probably did at the time, but I -- I really don't -- don't remember. 1974 I would have been an assistant brand manager.
Q. Of what brand?
A. I think Virginia Slims.
Q. Were you -- does it -- did it --
A. I do not think. I know Virginia Slims.
Q. Okay. Did it concern you in 1974 that Philip

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Morris had hired the Roper Organization to conduct a study into the dynamics of the market of smokers with no lower age limit?

A. I don't remember my reaction again in 1974, what I did or didn't think. My focus was on Virginia Slims and my focus was on building marketing programs, developing marketing programs for Virginia Slims, and again I felt very comfortable in our practices and in our internal policy and the way we conducted our business. And that was my main concern.

Q. Philip Morris was aware that it was a dominant brand among 15- to 17-year-olds, wasn't it?

A. That --

MR. HOWARD: Objection.

Q. For at least the last 20 years Philip Morris has known that it was the number-one brand among 15- to 17-year-olds; isn't -- isn't that true?

A. Are we talking -- are we talking about Virginia Slims or --

Q. Philip -- Marlboro.

A. Oh, sorry.

Q. What did I say?

A. You didn't.

MR. HOWARD: You said "Philip Morris."

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Q. I'm sorry.
A. We were talking about Virginia Slims, so I was confused.
Q. I understand the confusion, so let's start again.
For at least the last 20 years Philip Morris was aware that Marlboro was the number-one brand among -- among 15- to 17-year-olds; correct?
A. I don't -- I don't know that I would necessarily agree with your time frame, but the fact is Marlboro is the number-one-selling brand in the country and Philip Morris is certainly aware of the fact that there is an underage smoking issue and problem, which is why we've been so proactive in trying to do something about it. So it would come as no surprise that if Marlboro is the number-one-selling brand among almost every demographic group in the country, that it would also sell to underage smokers.
Q. Let me show you what's been previously marked as Exhibit 685, a document produced by Philip Morris bearing Bates stamp number 2041761868 through 1871, a memorandum dated November 10, 1977 from N. Holbert to J. Zoler entitled "Incidence of Smoking."
A. I do. I've seen it.
Q. Okay. And this has attached to it two different

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tables, one a table of the incidence of adult smoking and the second an incidence of teenage smoking; right?

MR. HOWARD: Objection again to the definition of "teenage smoking."

A. Yeah, part of this is fairly unreadable, but I do see that, what you're -- you're referring to.

Q. Okay. And let's focus on the second table, the last page, the incidence of teenage smoking in USA, a compilation.

A. Uh-huh.

Q. Do you see the ages are listed at the top there? Right?

A. Uh-huh.

Q. So there's no ambiguity about what age-groups are being reflected here; right?

A. That's correct.

Q. Okay. And under "Source" there are a series of code letters, and the codes appear at the bottom there. Do you see that?

A. Yeah, American Cancer Society and others, yes.

Q. Well what's -- what's Q?

A. Department of Health.

Q. No, the source Q under --

A. Oh, I can't read the -- ORC.

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Q. Right. Isn't that Opinion Research Corporation, isn't it?
A. Well is it? I don't know.
Q. Okay. Well take a look at 1973, which shows that its -- the source is Q or this ORC survey, and under 12 to 17 it shows a total incidence of 13, male 14 and female 13. Those are the same numbers that we just looked at a few moments ago from the 1973 Opinion Research study; --
A. Uh-huh.
Q. -- right?
And apparently there was a 1971 Opinion Research Corporation study that showed a 20 percent penetration of the 12-to-17-year-old market?
MR. HOWARD: Objection, no foundation.
A. There is a 20 under the 12 to 17. I don't know what --
Q. And that would --
That's the same group that did that 1973 study, the ORC survey; right?
MR. HOWARD: Objection, no foundation.
A. I -- I can only assume. I don't -- I don't know that for sure.
Q. So apparently Opinion Research Corporation was providing data to Philip Morris on 12- to

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17-year-olds smoking in the '60s and in the '70s on multiple occasions; right?

MR. HOWARD: Objection, no foundation.

A. I can only respond to the documents that you showed me. I can't --

Q. Your counsel objected on foundation grounds. I want to clarify. You don't know; right?

A. I don't know.

Q. And --

And you didn't do anything to find out, right, to prepare yourself for this deposition?

A. I did not do anything to find out what Opinion Research had been doing, no.

Q. Okay. You've heard of Leo Burnett USA, haven't you?

A. Yes, I have.

Q. That's a advertising firm; --

A. It's --

Q. -- correct?

A. -- our ad agency, that's correct.

Q. It's been Philip Morris's ad agency for decades; right?

A. That is correct.

MR. HOWARD: Can we go off the record for a moment?

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MR. GORDON: Do you need a break?

MR. HOWARD: Yeah, I really do.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MR. GORDON:

Q. I'm showing you what's been marked as Exhibit 679, a document produced by Philip Morris bearing Bates stamp number 2048677983 through 78044, a document entitled "YOUNG ADULT SMOKER TARGET, AN IN-DEPTH LOOK" --

A. Uh-huh.

Q. -- prepared for Philip Morris USA September 22nd, 1989 --

A. Uh-huh.

Q. -- by the research department of Leo Burnett USA.

Have you seen this document before?

A. Yes, I have.

Q. Okay. I want to direct your particular attention to I guess the pages -- well maybe they're numbered. It looks like page 12 in the lower left-hand corner, Bates number 7994.

A. 994.

Q. Do you see that? Do you have the same page, Roman numeral "II, A LOOK AT OUR U.S. TARGET: WHERE

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THEY ARE"?
A. Uh-huh.
Q. What --
A. Yes, I see that.
Q. What does that phrase refer to, "U.S. TARGET"?
A. I -- I would assume it means our young adult smokers, 18 years of age and above.
Q. In marketing parlance, what is a target?
A. It could mean an audience, you know, your target, your audience, your focus, your program. I mean, it's all -- it's a bit of lingo, but it's -- it all means pretty much the same. It -- it really means your audience.
Q. Okay. And according to this report, this particular target -- and I assume that means to young adult smokers. That's -- that's what this whole report is about; right?
A. That's what I indicated, yes.
Q. Okay. And it says that -- that these particular target -- this particular target is at a unique stage in life; right?
MR. HOWARD: Objection. The document speaks for itself.
A. Where do you see the word "unique"?
Q. Right -- right under Roman numeral II, "IN ORDER

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TO REALLY" --

A. Yes, I see that. Sorry.

Q. Okay.

A. Yes.

Q. It says "FIRST, THEY ARE A 'MOVING' TARGET, IN TRANSITION FROM ADOLESCENCE TO YOUNG ADULTHOOD"; right?

A. That's right.

Q. So they're not yet at adulthood; right? They're in transition from adolescence to young adulthood?

MR. HOWARD: Objection.

A. Our target, our audience is in adulthood. They're 18 and over, and as I say, there certainly is some lingo and some buildup in this report, but the fact is I think I have to just say that what we did with this report, how we used it was to understand the young adult smoker who is the audience for Marlboro as well as some of our other brands, and that's what this study is all about.

Q. Does Philip Morris disagree that the young adult smoker is in transition from adolescence to young adulthood?

A. Well I -- I would assume that if someone becomes 18, 19, 20, they're in transition. It's a transitionary time in one's life, going from being a

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student and going into the work force, so they're getting married. There are a lot of transitions that happen in a -- a young adult's life. Once they become a young adult and 18, they start -- as I -- we said before, they might have to face military service. They certainly get the opportunity to vote for the first time. There are a lot of things that are happening, so it is a transitionary period.

Q. Okay. Turn to the next page, if you would. That's -- the first line on this page is that it is a "KEY TASK AT THIS STAGE IS FOR TARGET TO ESTABLISH OWN IDENTITY." Do you see that?

A. I do.

Q. And that was something that Philip Morris considered in its marketing to the young adult smoker target?

MR. HOWARD: Objection. I think it's ambiguous.

A. I -- I believe what this study is telling us, if you start reading it from the very beginning, is describing some of the conditions that exist among this audience, understanding the 18-to-24-year-old target, which is what it says on -- clearly on the first page. I mean, that -- that is the target. What are they all about? What are their concerns?

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Who are they? What do they think about? Where are they?

It doesn't mean that as you pick out sentence by sentence that that's what we thought about specifically in thinking about how to market our brand. Yes, of course you understand -- try to understand your market, which is what we tried to do, and then a marketing program is put together to market to young adults 18 and over. And -- and that's what we've always said we -- we've done.

Q. Those ones in transition from adolescence to adulthood; right?

MR. HOWARD: Objection.

A. Well, you know, I mean, some 18- to 24-year-olds are in transition and some of them were established. We market to adult smokers. I mean, I really think that is the point, that our marketing programs are focused on adult smokers, and there are many conditions that exist among those adults.

Q. Okay. And this --

The whole purpose of this study was to assist you in developing a marketing program that would be most effective in marketing to this particular target group; right?

A. It was, from where I sit, a -- a -- a research

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document that would help us understand the market and then perhaps extrapolate some of the information to help us develop marketing programs, but often a lot of what you find out in these studies you -- you find out, you file away and really plays no particular part in your program.

Q. Turn to page -- to what would be page 14, I guess, 7996. And the first line there says "DURING THIS STAGE, TARGET ENJOYS FREEDOM TO EXPERIMENT WITH NEW POSSIBILITIES WITHOUT HAVING TO COMMIT." Do you see that?

A. Yes, I do.

Q. Smoking could be a new possibility that they could be free to experiment with; right?

MR. HOWARD: Objection, calls for speculation.

A. Might be, but they're talking about live-in boyfriends, no parents, freedom, maybe not having to work. I mean, I think there are a lot of possibilities for young adults to think about.

Q. Sure. And if a young adult experiments with something that is addictive, that could rob them of their ability to give it up if they so choose; right?

MR. HOWARD: Objection as to form.

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A. I can't comment on that. I'm not an expert on addiction.
Q. Well have you ever heard the word "addiction" before?
A. Yes, of course I have.
Q. You --
Would you acknowledge that there are certain things that are addictive?
A. I believe there are things in life that are addictive.
Q. And if a -- a -- a young adult who's enjoying the freedom to experiment with possibilities starts experimenting with something that's addictive, they no longer have the freedom to choose to give it up; right?
MR. HOWARD: Objection.
A. Oh, I think you always have the freedom to choose. It's a matter of what you have to do to -- to make that choice.
Q. Fair enough. If they choose to experiment with something that is actually addictive, their ability to choose to give it up is limited by the fact that it -- they've chosen to engage in something that's addictive; right?
MR. HOWARD: Objection again.

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A. I -- I really believe that that is a generality, and I would have no comment beyond that.
Q. And you --
I take it you would agree that it would be reprehensible for a cigarette manufacturer to do anything to its products to make it more difficult for somebody who experiments with them in this transitional phase to ultimately give them up once they've experimented with them; right?
MR. HOWARD: Objection, vague.
A. I -- I -- I would rather answer your question by saying we don't do anything to our products.
Q. I'm not suggesting that you do.
A. All right.
Q. I'm just asking you would agree that if a cigarette --
A. Well, I mean, that's a hypothetical. That's a hypothetical question that, you know, I thought we didn't want to get into hypothetical discussions.
Q. Well I want to -- I want to get into Philip Morris's position. Philip -- you've been very eloquent today about explaining Philip Morris's position on not wanting youth to smoke, and we've just gone through a document now that talks about the -- the young adult smoker being in a transition

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phase -- transitional phase from adolescence to adulthood and having the freedom to experiment with new possibilities without having to commit, and my question to you is: Would -- would you agree -- "you" being Philip Morris -- agree that it would be reprehensible for a cigarette manufacturer to do anything to its product to make it more difficult for somebody who chooses to -- to quit smoking after having experimented with it?

MR. HOWARD: Objection as to form. Answer if you're able.

A. Yeah, it's -- it's -- it's -- I -- I would think it would -- I would not be in favor of us certainly or any other tobacco company doing something to the product that was not a natural part of the product and inherent in the product to start with if that's what you're asking me. But I think that -- you know, I don't believe that smoking is addictive and I don't believe that we would make it impossible for young people to choose not to smoke once they try.

Q. You would agree that for some people it is difficult to give up smoking?

A. Certainly.

MR. HOWARD: Objection as to form. Go ahead.

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A. I believe for some people it's difficult to give up chocolate.
Q. Okay. And you would agree that it would be improper conduct on the part of a cigarette manufacturer to do anything chemically to a cigarette to make it even more difficult for some people to give up smoking; correct?
MR. HOWARD: Let me just object at this point. This is going far afield to the 30.02(f) designation for this witness, and I want it perfectly clear that the responses on this line of questioning are on behalf of herself and not as a Philip Morris designee, not that her answers are not -- let me just leave it at that.
A. Could you repeat your question?
Q. You would agree that it would be improper conduct on the part of a cigarette manufacturer to do anything chemically to a cigarette to make it even more difficult for some people to give up smoking; correct?
MR. HOWARD: Objection, lack of foundation.
A. Again I -- I am much more comfortable from my standpoint talking about what our practices are as opposed to dealing in hypotheticals as to what would

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or would not be, and our policy about smoking and smoking -- smokers is very clear. We believe that smoking should be an individual adult choice, and the adult should be free to make the choice to smoke and the adult should make -- be free to make the choice not to smoke or to stop smoking if that is their wish or desire.

And we as a company don't do anything to in any way influence that choice. What we do is once the choice is made, we certainly market to those adult smokers to ensure that they choose our brand over our competitions', and that's what we do.

Q. And with respect to young adult smokers, it's Philip Morris's position that it would be wrong for Philip Morris to do anything to its cigarettes to make it more difficult for a young adult smoker to choose to quit smoking?

MR. HOWARD: Objection, again lack of foundation and also assumes facts not in evidence.

A. I would say that it is our policy for all smokers, young adult, older adult, men, women, anybody. We believe that the decision to smoke is an adult decision and that an adult has a right to make that decision and have it respected. By the same token, an adult has a right to make the decision not

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to smoke, and if that were that person's decision, then that has to be respected.

And that's how we conduct our business and our marketing activities, and we do nothing to in any way try to influence the decision whether or not to smoke.

Q. And whether or not to quit smoking?

A. Whether or not to quit smoking, but once that decision is made, then -- then it is up to the adult and we respect it one way or the other.

Q. And it would be wrong for Philip Morris to do anything chemically to its cigarettes to make it harder for people who choose to give up smoking to actually do that?

MR. HOWARD: Objection as to form. You may answer again.

A. It's -- it's not a matter of would be, wouldn't be. We don't.

Q. And you would agree that it would be improper for Philip Morris to market its legal product illegally by trying to attract youth; right?

A. I absolutely believe that it would be wrong for us to market our legal product illegally.

Q. And marketing to youth would be --

A. That's right.

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Q. -- illegal?

A. There are -- there are minimum-age laws in all 50 states. We not only observe those laws, but as I was telling you earlier, we have gone out of our way to create proactive programs to deny youth access to our -- our products through Action Against Access and other steps that we have taken over the years in support of any number of programs to ensure that youth are not only denied access but understand that they should not buy cigarettes, et cetera.

We've worked with local law enforcement, community leaders, legislators, helped pass legislation in many states, supported minimum-age laws at the time, so our focus has definitely been over the years in trying to prevent youth access.

MR. GORDON: No disrespect intended, but I move to strike that as nonresponsive.

MR. HOWARD: I think it was entirely responsive.

MR. GORDON: No, and that's why we have a judge; he'll make that decision.

MR. HOWARD: That's correct.

MR. GORDON: Thank you. I have nothing further.

MR. NUNLEY: Just one thing, Mr. Gordon, on

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that. Your comment about the judge making a decision is a perfect segue into this. I understand that the judge has indeed made a decision on a -- a topic you and I have had some correspondence on, and that is your failure to designate or to identify on your designation of documents which documents you intended to use with which witnesses.

I understand Judge Fitzpatrick was asked to rule on that today and did so and ruled that the plaintiffs have a good-faith obligation to identify those documents they intend to use with the specific 30.02(f) witnesses, and as we're finished with Ms. Merlo -- Ms. Merlo, I'd ask you to prepare to tell us that before we start Mr. Mikulay's deposition and certainly to be in a position to tell us that as to Dr. Ellis.

MR. GORDON: Well I'm not familiar with the ruling. Obviously I wasn't in court today and I -- I'm not in a position where I can tell you right now.

MR. NUNLEY: Well you can certainly call and find out from your colleagues who are in Charlotte.

MR. GORDON: It wouldn't matter what -- what the ruling is in terms of my ability right now

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to --

MR. NUNLEY: I'm sure you have the documents you intend to use with Mr. Mikulay available, don't you?

MR. GORDON: I have a number of documents that I may or may not use with Mr. Mikulay. Plus, we have all the documents that have been marked as exhibits that are -- that are predesignated.

MR. NUNLEY: Why don't you show your good faith and -- and let us see those that you plan to use with Mr. Mikulay beforehand, as you should have done --

MR. GORDON: Well, you know what? I'm going to -- I'm going to call my colleagues because I --

MR. NUNLEY: Good.

MR. GORDON: -- not that I don't trust your representation, but there have been instances before where information has been provided in depositions that for some reason has not been a hundred percent accurate, so I will do that.

MR. NUNLEY: Good.

MR. GORDON: Why don't we take a break.

MR. HOWARD: Before we go off the record, is Ms. Merlo excused or does the State of Washington

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have any inquiry for her?

MR. JARVIS: The State of Washington at this time has nothing to ask Ms. Merlo, perhaps at a later time.

MR. HOWARD: Well --

MR. JARVIS: In a fact, not in a 30(b)(6).

MR. HOWARD: Okay.

THE REPORTER: Off the record, please.

(Recess taken.)

(Witness sworn.)

MR. GORDON: I just want to note something on the record. At the -- at the conclusion of Ms. Merlo's testimony, Mr. Nunley informed me of a -- of a ruling today from Judge Fitzpatrick regarding predesignation of documents.

I want the record to reflect that in the break I gave Mr. Nunley a copy of each of the documents that I am likely to use with Mr. Mikulay today. It's difficult obviously to predict what his testimony might be and whether there may be other documents, and certainly there are some of the documents that -- that I gave Mr. Nunley that I may well not use with Mr. Mikulay. I was able to do that because I have already segregated them out and was ready to go.

I do want to note our objection to -- to this

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process and in particular our objection to the manner in which the court ruling this afternoon was obtained. It is my understanding from a phone conversation -- and of course I, you know, note that -- that information transmitted this way can get garbled, but it's my understanding that the ruling was issued by the court in a video conference with the deposition ongoing now in Charlotte, North Carolina, and during the deposition it is my understanding that the defendants in that case asked the court to direct the plaintiffs now to predesignate specific documents for specific 30.02(f) deponents despite the fact that all the 30.02(f) depositions of the plaintiffs' deponents are completed and the defendants never so designated -- predesignated documents for the depositions they took of our people and that when this was called to the court's attention, the defense counsel represented to the court that the reason defense counsel had not predesignated for separate deponents in the plaintiffs' 30.02(f) depositions was because the plaintiffs had not identified specific individuals more than ten days in advance of the deposition, which is a -- an inaccurate and incorrect statement.

I don't -- I do not believe the court was fully

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apprised of the history of this case and was misled by the representations. At least that's my understanding. Nevertheless, given that the court directed us to use good faith to predesignate, I have provided Mr. Nunley with the documents that I am most likely to use with this particular witness.

With respect to the last 30.02(f) witness, I -- it's a much more difficult situation. Her topic areas cover more than half of the 30.02(f) topics. In addition, she is testifying as an expert and her expert areas cover almost the entire scope and breadth of the lawsuit. And it was for that reason that our -- that our predesignation in toto was the largest I have done in predesignating any -- any documents for a deposition simply because there were so many subject areas on which this person is -- is -- will be testifying, Dr. Ellis.

For that reason, my ability to identify the specific documents that we will use with -- with Dr. Ellis is much different than it was with Mr. Mikulay. I can represent to counsel that I will not be using any of the documents that I marked or used with my examination of Ms. Merlo. I'm virtually certain I will not use any of the documents that I'm about to use with -- with Mr. Mikulay. I am equally

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certain that I may -- may well use some of the documents that I used today with Dr. Houghton as well as that we used this morning -- well we didn't use very much, but possibly a little bit with what we used with Ms. Purcell.

But beyond that, the bulk of our predesignation is -- really does cover almost everything else Dr. Ellis is going to testify. I'm sure there are some specific marketing and advertising documents and probably some youth-specific documents that were predesignated in anticipation of using them with Mr. Mikulay or Ms. Merlo that we won't be using with -- with Dr. Ellis.

Other than that, pretty much everything on our predesignation, other than the exclusions that I've just mentioned, are things that we're going to be taking a look at. I -- I in New York have eight banker's boxes of documents, and we're trying and will be continually whittling them down as we -- as we go forward in preparing for and actually during the taking of the deposition of Dr. Ellis, but given the scope -- scope and breadth of the areas she's going to be testifying on, there -- there's going to be a lot of documents.

I will note that I do not anticipate using any

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of the outside published articles that were referenced in her expert test -- report in the 30.02(f) portion of her deposition; however, we reserve the right to use them on the expert portion of her deposition. I don't know if that helps at all because we -- we still may use them.

I also note, by the way, that on -- on September 19th Philip Morris served us with a list of several hundred additional documents that Dr. Ellis is purportedly relying on in her -- in her expert opinion, which presumably she has reviewed in -- in the last several weeks or even months, and given that we were served with this list just on -- on the 19th, we have not had any meaningful opportunity to examine any of those documents. But we're going to limit our examination to the documents that had been previously identified as the documents she re -- relied on.

MR. NUNLEY: Well let me just say that I'm sort of shocked that Mr. Gordon would criticize Judge Fitzpatrick's ruling given that he wasn't even there for the argument and, as far as I know, didn't even know what the ruling was in toto or that he would accuse cocounsel in this case of making misrepresentations to the court, again given that he wasn't there, but I guess that speaks for itself.

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Certainly we'd like to have -- have had the documents for Mrs. Purcell, Mr. -- Dr. Houghton, Ms. Merlo and Mr. Mikulay in time to make some use of them. We do appreciate the gesture of turning over the documents to be used for Mr. Mikulay 15 minutes or so before the deposition was to begin, and obviously I think the record's clear that we can only make so much use of them.

To the extent that -- that the court has asked for counsel to exercise good faith in providing us predesignations for the 30.02(f) deponents, I don't think you can simply say, "Well, consider everything that -- that we've not yet used in this 30.02(f) to be fair game for Dr. Ellis." I don't think that meets the letter or the spirit of the court's ruling, and I hope counsel after some cool reflection outside the crucible of the deposition room will realize maybe the more appropriate thing to do would be to give us a reasonable cut at what he expects to use with Dr. Ellis, and we'll be standing by to receive that.

And I might also say that Exhibit 1301 or what was introduced as 1301 was not Category II, has been returned to us. Exhibit 1302 was Category II, and the court reporter has entrusted us with the original

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of that. I believe 1301 was copied, and the court reporter has a photocopy of that document.

MR. GORDON: Sorry for all that, Mr. Mikulay.

He's sworn?

THE REPORTER: Yes.

MR. GORDON: Okay.

ROBERT L. MIKULAY

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. GORDON:

Q. Could you state your full name for the record, please.

A. My name is Robert L. Mikulay.

Q. And your current employment, sir?

A. I'm employed by Philip Morris USA --

Q. What's your position --

A. -- as senior vice president, marketing.

Q. How long have you held that position?

A. Since December of 1994.

Q. How long have you been employed by Philip Morris in any capacity?

A. Slightly over 22 years.

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Q. Has that been in marketing the whole time?
A. It has not. I've been a member of the marketing department since the middle of 1989.
Q. What departments were you in before that?
A. Prior to that, I was in the sales organization for approximately four years, a member of the operations department for approximately two years before that, and the remainder of the time pre-1983 was in our Richmond, Virginia, facility as a member of the human resource department.
Q. What is the purpose of the Philip Morris marketing department?
A. The purpose of the Philip Morris marketing department is to design, develop and execute brand marketing and advertising programs for our portfolio brands.
Q. What's the end goal of those activities?
A. The end goal of -- of what we do is to increase our share of market in the U.S. marketplace. We design and execute programs for each of our brands that speak to the adult smokers of our brands to reinforce their brand choice, to ensure that they stay with their -- their brand choice, minimize their alternate occasional purchase of competitive brands and to speak to adult consumers of competitive

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products of ours in an attempt to convince them to try and hopefully switch to our brands.

Q. Okay. When you say increase share of market, you mean to increase your sales?

MR. HOWARD: Objection.

Q. Right?

A. No. I mean increase share of the existing market.

Q. So you don't care about your actual number of sales? You just are interested in the percentage of -- of the existing market that Philip Morris can claim?

MR. HOWARD: Objection as to form. You can answer.

A. We are concerned with -- with our sales. There have been periods of time where -- in the past where the size of the industry has been increasing, and in order to grow our market share, part of what may have been part of the strategy would be to -- to grow volume and grow share at the same time. For the last 15 years, the U.S. industry has been characterized by overall decline on the basis of somewhere in the neighborhood of 1 to 2 percent a year. It's become much more of a -- of a market-share activity.

Q. When you say "grow volume," you mean sell more

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cigarettes; right?

A. That's correct.

Q. And the more cigarettes you sell, the more money Philip Morris makes; right?

A. It would depend on a number of factors. There have been points in time where we've sold more cigarettes and they happen to be what we refer to as discount cigarettes where the margins are lower than premium cigarettes, and so it doesn't necessarily equate that -- that profitability follows. There certainly could be situations where the amount that you spend to gain that market share or the way that you spend it, if you spend it inefficiently, may not translate into -- to increased profits.

Q. Ultimately the goal of the Philip Morris business is to increase profits for the benefit of shareholders; right?

A. That -- that is correct.

Q. If half of the smokers in the United States were to stop smoking today but they all stopped smoking your competitors' brands, that would increase Philip Morris's share of the market; correct?

A. Yes, it would.

Q. But it wouldn't necessarily increase profits; right?

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MR. HOWARD: Objection.

A. I can't say whether it would or would not. It might. The U.S. cigarette marketplace is -- because it's a declining industry is a very competitive marketplace. If the hypothetical situation that you described occurred, we, for example, may spend less money on some of our programs than we have to today in order to fight for the market share that we have.

Q. Okay. Let's go over the ways that you can increase profitability. One would be to switch sales over to higher-margin items; right?

MR. HOWARD: I just want to object at this point. I think this does go beyond the 30.02(f) designation, and in this capacity Mr. Mikulay, if he's able, can speak for himself and of his own knowledge.

A. I'm sorry, could you ask the question again?

Q. One of the ways that Philip Morris can increase its profitability is to -- is to switch its mix of sales to the higher-margin items; right?

A. That would be a possible way to increase profits assuming that you maintain efficiencies in terms of your spending.

Q. Another way to do it is to decrease your spending on marketing and advertising, assuming

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everything else stays the same?

MR. HOWARD: Objection as to form.

Q. Is that right?

A. In your hypothetical question, that -- that would be true, assuming everything else would stay the same and that share of market would not drop as a result of reduction in spending.

Q. Okay. Another way would be to increase absolute volume of sales; right?

MR. HOWARD: Objection as to form.

A. Again in your hypothetical example, that could be correct, assuming that business efficiencies were maintained and the way -- the way that you spent to increase that volume was done in an efficient way and that that didn't equate to a shift from higher-margin to lower-margin products, for example, that translated into higher volume.

Q. And all three of those are -- are goals of the marketing department; right?

MR. HOWARD: Objection. All three of what?

Q. Those ways of increasing profitability: Shifting purchasers to higher-margin items; spending as efficiently on marketing and advertising, in other words, giving them the biggest bang for your

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advertising and marketing buck; and increasing the absolute volume of sales. Right?

MR. HOWARD: Objection as to form.

A. The objective of the marketing department and the responsibility I have is to increase my share of market and increase the share of my various brands in the U.S. marketplace.

Q. What --

What's the difference between advertising and marketing?

A. In -- in my language, I -- I utilize "marketing" to describe a broader array of programs used to communicate to -- to consumers to market our products to them. "Advertising" I tend to think of as the ads that we would place in publications or billboards, so a component of marketing.

Q. Give me some examples of things that are -- that are marketing but aren't advertising.

A. In our parlance, I would -- I would consider a promotion that's delivered to consumers at retail. As an example, if you buy four packs of this brand today, there's one free pack attached. We -- I would tend to talk about that as -- as a retail promotion, part of the marketing mix, and don't generally talk about it as advertising, although there's an

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advertising component that would go along with that in terms of the communication at retail as to the offer and the brand that's making the offer.

Q. Coupons would be another form?

A. Coupons would, yes.

Q. So advertising and promotion are both aspects of marketing; is that correct?

A. That's correct.

Q. Sponsorship of cultural events, that would be an aspect of marketing?

A. Sponsor -- our brands do engage in sponsorship of certain events, another opportunity to -- to reach our consumers or our competitors' smokers.

Q. And that's all part of marketing? The overall department is marketing; right?

A. That's correct.

Q. And you're here today to testify as the Philip Morris spokesperson on issues of advertising, marketing and promotion; right?

A. That's correct.

Q. Philip -- it's Philip Morris policy -- strike that.

Philip Morris only advertises to get switchers to its cigarettes and to keep its existing smokers smoking Philip Morris cigarettes; right?

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Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

A. We advertise to speak to the -- the adult smokers of our brands, to reinforce the choice that they've made in that brand with the hope that they stay with that brand, to encourage that the -- the largest possible share of their purchase requirements are from that brand as opposed to occasionally purchasing competitive brands as well as to speak to adult consumers of competitive brands with the objective of getting them to try our brands and obviously potentially switch to our brands.

Q. What about people who have made a decision to start smoking but haven't yet decided which brand to try first? Does Philip Morris market to them at all?

A. Well to the extent that our marketing programs are designed, as I indicated, and our brand programs are designed to -- to build our brands and build our brand equity and speak to adults who have made the decision to smoke, yes, that would be part of the audience that we would potentially be speaking to in our programs.

Q. And those people are known as starters; right?

MR. HOWARD: Objection, no foundation.

A. Internally I have or I've heard them referred to as new smokers. I've heard some people utilize the

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

phrase "starters."
Q. Not something that you use?
A. I may have at -- from time to time.
Q. Okay. And it's Philip Morris's position that advertising does not create any desire for nonsmokers to start smoking; is that correct?
A. My understanding is that the reason people start smoking has more to do with whether or not their peers smoke, influence from their parents, whether or not their parents smoked, and that -- that advertising doesn't -- doesn't influence that decision. As I said, our objective and -- and our strategy is to speak to adults who have chosen to smoke and reinforce brand choice.
Q. Could advertising influence the decision to start smoking if you set that out as a goal?
MR. HOWARD: Objection, calls for speculation.
A. I don't have any where -- way to answer that. I couldn't confirm or deny whether -- whether it could. I can't imagine in a -- in a mature product category that is a well-known category, been in existence for hundreds of years, that there would be any news value in that -- in that hypothetical situation. And -- and what we do is -- is speak to

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

people who have decided -- adults who have decided to smoke.

Q. Right. What I'm trying to understand, let me see if I can explain it and see if you can help me out. As I understand Philip Morris's position, the position is that -- that cigarette advertising does not influence the decision whether or not to smoke. Right?

A. That's correct.

Q. And my question is: Is that --

Is it Philip Morris's belief that advertising doesn't influence the decision whether to smoke because for whatever reason it's inherently impossible for advertising to do that or because the cigarette manufacturers have made a conscious choice not to advertise in such a way that its advertising would influence the decision whether or not to smoke?

MR. HOWARD: Objection as to form.

A. I can't answer the -- the first part of that. I have no -- the hypothetical portion of it. I have no basis for knowing one way or the other. I've never looked into it, never studied it, never -- frankly never thought about it.

To the second point, we do what we do, as I've

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

described, because there is a marketplace of -- the latest estimate I've seen is 45 million smokers, adult smokers, in this country, and my job and the job of the marketing department is, as I said, to hold on to or increase our market share of that -- of that populous, and that's -- that's the most efficient way that I can think of to spend our dollars, to speak to that population.

Q. But it's also Philip Morris policy not to do anything in the marketing area to try to encourage nonsmokers to take up smoking; right?

MR. HOWARD: Objection as to form.

A. It is not our desire or intent to speak to adults who have chosen not to smoke or have not chosen to smoke.

Q. Why not?

A. Because adults are well aware of the category, the product; as I said, it's been around for hundreds of years. They're free to choose for whatever reasons whether to smoke or not to smoke, and my interest and Philip Morris's interest is once they have decided to smoke, I want them to decide to smoke my brands.

And that's the most efficient and effective use that I can think of of our marketing dollars, to

http://legacy.library.ucsf.edu/tid/bpn95a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

speak directly to someone who has decided to smoke and convince them to choose or, if they already have chosen one of my brands, to stay with my brands.

Q. Well wouldn't it be in Philip Morris's economic interests to encourage people -- adults who have not yet chosen whether or not to smoke to choose to smoke?

MR. HOWARD: Objection as to form.

A. I don't know whether it would be or not, and I -- and I haven't thought about it. It's -- it's, as I said, not something that -- that we think about, not something that I do. I've got enough to worry about in managing the brand portfolio that I have and holding on to or increasing the market share that I have.

Q. Why doesn't Philip Morris want to encourage people who haven't yet made the decision whether or not to smoke to make the choice to become a smoker?

MR. HOWARD: Objection as to form.

A. Well I can answer from my perspective, and I think it's the company's perspective. We believe that individuals should have the freedom to choose to smoke and, if they choose to, should be free to utilize and enjoy a legal product.

In the same vein and consistent with that, we

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/mqhd0001

would feel and I feel if you've chosen not to, that's a -- a decision, an informed decision an individual has made, and there's no value in my -- in -- in our -- or I don't even know if there's an opportunity to convince them otherwise. So we focus our efforts on a portion of the adult population that's freely chosen to smoke.

Q. Let me see if I can give you a hypothetical from another area and see if that makes my question any clearer because I -- I'm apparently not doing a very good job here.

Kraft is a sister company to Philip Morris USA; right?

A. Correct.

Q. And one of Kraft's major products is cheese; right?

A. Yes.

Q. And cheese is a fairly mature market; right?

A. Yes.

Q. People have decided long ago whether they're going to eat cheese or not eat cheese; right?

MR. HOWARD: Objection, --

A. I'm not familiar with --

MR. HOWARD: -- calls for speculation.

A. -- the dynamics of the cheese market or the

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

cheese consumer, but --

Q. Well it's not a product you have to do a lot to explain to people what cheese is and what it does and, you know, what its benefits or advantages are. People pretty much know what cheese is; right?

A. I -- I would suspect that people generally know what cheese is.

Q. Okay. A few years back do you recall Kraft doing a campaign where the tag line was essentially "Things are better with cheese" and there would be a picture of a juicy hamburger with a nice piece of melted cheese kind of starting to drip off its sides and it would be on billboards and very mouth watering? Do you recall those?

A. As you describe it, I can recall the visual of a hamburger with melting cheese. I don't recall the details of the campaign and I -- I'm not sure if it's Kraft, but I recall whatever --

Q. And -- and -- and -- and I don't -- you know, I don't want to -- want to -- I'm not representing that it necessarily was Kraft. That's my recollection, but it may not have been.

But the purpose of that kind of advertising was to get the adult who's -- or, for that matter, presumably a teenager driving down the road, sees

http://legacy.library.ucsf.edu/tid/bpp05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

this billboard, to think, "Gosh, I could go for a nice cheeseburger right now" and have them either pull into a local restaurant or go to a grocery store and -- and pick up some cheese and have a cheeseburger that they might not otherwise have -- have decided to -- to choose to eat at that point; right?

MR. HOWARD: Objection, calls for speculation, but you can answer.

A. Yeah, I -- as I said, I don't recall the particular campaign and I certainly can't speculate on the intent. There could be a number of explanations. If indeed it were, to your recollection, a Kraft ad, it could very well be it could have been a -- a brand ad or a brand campaign to get Kraft cheese or one of the Kraft cheese brands maintain top-of-mind awareness so when the shopper goes to the grocery store or wherever they go to buy cheese and reach into the -- the cold counter, they'd pick Kraft cheese, in this example, as opposed to another brand or a private label or generic brand or just a block of cheese.

Q. You know, now that I think about it, maybe it was a Dairy Association promotion or something for cheese generically, but my -- my -- my point on using

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

the cheese example is the -- the marketing strategy behind that was to get customers to increase their consumption of the product; right?

MR. HOWARD: Objection, calls for speculation.

A. Again I'm not familiar with it. I'm not -- I couldn't speculate. It -- it could be, as I said, brand awareness. It could be, if it was the Cheese Council, a publicity campaign for the goodness of cheese. I don't know. I can't speculate.

Q. And you're certainly aware of marketing strategies, whether this particular one is a good example or not, but you're aware of marketing strategies where even in a mature market with a mature product, the goal is to increase consumer consumption of the particular product; right?

A. I can't think of any off the top of my head that are designed where -- where a company designs a campaign to increase category consumption as opposed to consumption of their brands. They may exist. I can't -- I can't think of any.

Q. So you can't think of any -- well strike that.

In any event, it's -- it's your testimony that Philip Morris does not do any marketing, advertising or promotion to increase consumption of its product

http://legacy.library.ucsf.edu/tid/bpn95a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

by those who are either already using it or who have not yet chosen whether or not to -- to smoke?

MR. HOWARD: Objection to the term "product" there. This is brands.

MR. GORDON: I mean cigarettes.

A. What we do is and what I do in my department is market brands, and I -- I market those brands to adults who have chosen to smoke.

Q. Why don't you market your brands to adults who haven't yet chosen to smoke?

MR. HOWARD: Objection, asked and answered several times.

A. As I said earlier, in a mature, well-known category, public awareness of the product, a certain portion of the adult population has chosen to utilize the product, and my job and our objective is brand building, to get them to utilize our brands over the competitors'.

Q. Smokers are extremely brand loyal, aren't they?

A. There is good brand loyalty in the category generally, more so on some brands than others.

Q. And historically the motivation to switch has come from the health issue; right?

MR. HOWARD: Objection, lack of foundation on historically, time frame.

http://legacy.library.ucsf.edu/tid/bpn95a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

A. My understanding of various reasons a consumer might switch is the availability of a new brand, price reasons, a promotion that they may try that gets them to try a different brand, dissatisfaction for whatever reason with their current brand, desire to -- to smoke a product with a different flavor or a different tar delivery.

MR. GORDON: Let me have this marked.

(Plaintiffs' Exhibit 1308 was marked for identification.)

BY MR. GORDON:

Q. Let me show you what's been marked as Exhibit 1308, a document produced by Philip Morris bearing Bates stamp number 200002189 [sic] through 2207, a document entitled on the second page "THE" -- "THE CIGARETTE CONSUMER, MARCH 20, 1984."

And certainly feel free to look at the whole thing. I'm going to ask questions about pages 10 and 14 and 15.

MR. HOWARD: Can I ask, Mr. Gordon, do you make a representation this came from Philip Morris's files?

MR. GORDON: It's my understanding, yeah. Do you know something that I don't?

MR. HOWARD: No. It's just there's no

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

indication of source other than perhaps the Bates stamp number, of which I'm not familiar, and I didn't know what the "RPMPTCC" is on the bottom of the page.

MR. NUNLEY: Mr. Gordon, I'd just say I'm not -- I'm not familiar with a 25 series that's a Philip Morris document. Do you think this is a Philip Morris-produced document?

MR. GORDON: I thought it was, but I'm certainly -- it's a ten-digit number, and I thought Philip Morris was the only one using ten -- ten-digit numbers.

MR. NUNLEY: Well I just -- I've never -- I've never seen one that starts with a 25.

MR. GORDON: You -- do you have -- you've got my predesignations.

MR. NUNLEY: Yeah.

MR. GORDON: I'm curious if it's on there because that would tell what database it's from too.

I note, by the way, that on page 12 it uses as a source a PM annual switching survey, and I think it unlikely that another manufacturer would be using that. Also it's talking about Marlboro and Merit. I don't know. Let's ask -- let's ask the witness.

BY MR. GORDON:

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Q. Do you -- do you --

Do you recognize this?

A. I don't recall ever seeing the -- the document, no.

MR. GORDON: It also says on page 16 "P.M. BEST SITUATED DEMOGRAPHICALLY."

MR. NUNLEY: Mr. Gordon, I'll tell you, just to point it out, it does appear on your predesignation. It's the only document, though, that has a 25 start number. I can't tell you that it's not a Philip Morris-produced document. I just do not recognize that as being --

MR. GORDON: What -- does it say what database it's from or --

MR. NUNLEY: No. It's --

MR. GORDON: Oh. Yeah, it -- that would --

MR. NUNLEY: That means a Philip Morris database.

MR. GORDON: That -- that's taken off the 4B, so that that -- this is a Philip Morris-produced document.

MR. HOWARD: And I acknowledge what you said about the indication, what page 12 says, and those are PM brands and it does say "P.M. ANNUAL SWITCHING SURVEY" in the content of the document. I

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

was just wondering because I don't know what "RPMPTCC" is. There's no cover page. I didn't know whether you were representing it to be a Philip Morris document or not.

MR. GORDON: It's my understanding that it is, and --

MR. HOWARD: Okay.

MR. GORDON: -- you know, let's -- let's see if what it says in here is consistent or inconsistent with -- with Mr. Mikulay's understanding.

BY MR. GORDON:

Q. Start with page ten. At the topic "BRAND LOYALTY" it says "SMOKERS EXTREMELY" BLAND -- strike that, "SMOKERS EXTREMELY BRAND LOYAL." Do you see that?

A. Yes, sir.

Q. Do you agree with that?

A. Well as I said, I'm not familiar with the document, so I'm not -- I can't speculate on where it came from or if this was research or an opinion. As I stated earlier, brand loyalty in -- in this category is higher than -- than a lot of other consumer packaged goods categories, is my understanding.

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Q. And do you see where it says about the second paragraph up from the bottom "HISTORICALLY, MOTIVATION HAS COME FROM HEALTH ISSUE, PEOPLE WILLING TO STICK WITH LOWER TAR BECAUSE THEY FEEL ARE DOING THEMSELVES A FAVOR"?

A. Yes, I see that.

Q. Is that consistent with your understanding?

MR. HOWARD: Objection, no foundation, ambiguous as to motivation of what.

Q. Motivation for switching; right? That's what that paragraph is referring to.

MR. HOWARD: Objection, no foundation.

A. It doesn't specifically speak to -- to switching. I can't tell specifically from that statement what -- what the document's referring to.

Q. So where it says just above it "SWITCHING REQUIRES EXTENDED USE AND MOTIVATION, EXTENDED USE TO GET ACCUSTOMED, MOTIVATION FOR EXTENDED USE; HISTORICALLY, MOTIVATION HAS COME FROM HEALTH ISSUE," you don't think that refers to switching?

MR. HOWARD: Objection as to form.

A. It may.

Q. And my question is: The motivation to switch, is it your understanding that historically that has come from the health issue?

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

MR. HOWARD: Objection as to form.

A. As I stated earlier, one of the motivations to switch, my understanding has been switching to different tar-delivery products. Another motivation would be price of the product, premiums and programs that are offered by -- by certain brands that may induce trial and switching.

Q. Which Philip Morris brands have the tar and nicotine content printed on the package?

A. I believe -- I believe Merit is the only brand that does.

Q. Why?

A. I'm not familiar with the exact reason that would have been done when the brand was launched. I would -- I would speculate that at a point in time where there was increasing consumer demand for lower-tar-delivery products and Philip Morris decided as one of their entries into that growing consumer segment was Merit, that a comparison of tar/nicotine deliveries of the Merit product relative to competitive products already on the market might be meaningful communication to the consumer who's looking to compare one brand to another.

Q. Isn't it a fact, Mr. Mikulay, that the reason Philip Morris puts the tar/nicotine content on Merit

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

and only Merit is because it wants to market those to consumers who are concerned about the health issue and want to switch to a lower-tar product because they perceive that smoking a lower-tar product will be of some health benefit to them?

MR. HOWARD: Objection, no foundation and compound and assumes facts not in evidence.

A. As I said, there are other competitive brands, it is my understanding, that had tar and nicotine delivery on their product prior to Merit's introduction. There are consumers who were smoking those products who may have been more interested than others in actually comparing those numbers. This is an opportunity to -- to fill that consumer demand for greater information than -- than they could already receive in terms of trying nicotine disclosure on advertising.

Q. Why would Merit smokers be more interested in tar -- comparing tar and nicotine numbers than Marlboro, Virginia Slims or Benson & Hedges smokers?

MR. HOWARD: Objection, calls for speculation.

A. I have no reason to believe they are or they aren't.

Q. Well why doesn't Philip Morris provide that

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

information for brands other than -- other than Merit?

A. We do provide that information for all of our brands. Tar and nicotine disclosures are part of all of our advertising.

Q. I'm talking about on the package itself. I'm sorry.

A. Again as I said earlier, I can only speculate that when the decision was made, there were brands of -- of positions similar from a marketing standpoint of similar tar and nicotine delivery, and for competitive reasons and clarity of communication to the consumer it was decided to put those desig -- designations on the pack --

Q. Wouldn't it --

A. -- I believe in the mid-'70s.

Q. Wouldn't it be --

Wouldn't it provide clarity to the consumer to have that on all Philip Morris packages?

A. I don't know that it would provide any more clarity than already exists in -- in the inclusion of that information on our ads.

Q. Let me direct your attention to page 14 of Exhibit 1308. Do you see the paragraph that says "PEOPLE BEGIN SMOKING, 1., PEER PRESSURE, 2., TO

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

REBEL/ASSERT INDEPENDENCE, 3., TO APPEAR GROWN UP, 4., TO EXPERIMENT"? Do you see that?

A. Yes, I do.

Q. Is that consistent with your understanding of why people begin smoking?

MR. HOWARD: Objection, lack of foundation, calls for speculation.

A. As I stated earlier, my general sense as to the influences on -- on people to -- to smoke is peer pressure, whether or not friends, colleagues smoke, parental influence, whether or not their parents smoke.

Q. And then do you see continuing on on page 14 "SOME RESIDUAL REMAINS OF THESE MOTIVATIONS AS SMOKERS AGE BUT, FOR THE MOST PART, PEOPLE CONTINUE TO SMOKE BECAUSE THEY FIND IT TOO UNCOMFORTABLE TO QUIT"? Do you see that?

A. Yes, I do.

Q. And in discharging your duties as head of marketing for Philip Morris, is that consistent with your understanding of why people continue to smoke?

A. I can't say that I have any knowledge as to why an individual might continue to smoke or why an individual might quit. I'm aware that there's a large number of former smokers who have quit. As I

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Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

indicated earlier, the industry has been declining in this country for 15 years, so apparently people continue to quit. Some people do not. Upwards of 45 million have not so far, and my focus, as I've stated earlier, is -- is marketing my brands to those who choose to smoke.

Q. And you don't do anything to study to find out why they continue to smoke?

A. I'm not aware that -- that the company's ever looked at why people continue to -- to smoke.

Q. Okay. Direct your attention to the next line on page 14 where it says, quote, "OVER 85 PERCENT OF SMOKERS AGREE STRONGLY/VERY STRONGLY TO," quote, "'I WISH I HAD NEVER BEGAN SMOKING,'" close quote. Do you see that?

A. Yes, I do.

Q. Is that the first time you've heard that statistic quoted?

A. I don't ever -- I don't recall ever hearing that statistic.

Q. Okay. Do you ever recall seeing any study that examined how many existing smokers expressed the wish that they had never begun smoking?

A. I -- no, I don't recall ever seeing any study that was done for that purpose.

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

Q. Let me show you what's been previously marked as Exhibit 357, a document produced by Philip Morris bearing Bates stamp number 2041787758 through 7815, a document entitled "SMOKER DYNAMICS."

(Witness reviews Plaintiffs' Exhibit 357.)

A. Sorry.

Q. Have you ever seen this document before?

A. I don't recall seeing this document. I saw a lot of documents in preparation for -- for this testimony. I may have seen it.

Q. Okay.

A. It doesn't ring a bell.

Q. Take a look at the first page of text on this document where under "SMOKER DYNAMICS" it says "IN TODAY'S MARKETPLACE A BRAND'S SHARE OF SMOKERS WILL GROW IF: IT ATTRACTS NEW SMOKERS OR IT ATTRACTS SWITCHERS OR IT ATTRACTS RETURNING SMOKERS." Do you see that?

A. Yes.

Q. You agree with all those statements; right?

A. Ways to grow brand share would be, as I've said earlier, smokers of -- of competitive brands switching into -- to one of your brands, attracting someone who has decided to smoke but hasn't made a brand choice, getting them to -- to choose your

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

brands.

Q. That's a new smoker?

A. That's -- that's a definition I'm using.

Q. Yeah, okay.

A. Yeah.

Q. Now if you would turn to page marked -- I think it's 33, Bates number 7791. It says under -- it says "NEW SMOKERS"; right?

A. Yes.

Q. And the first line says "ABOUT THREE-QUARTERS OF STARTING SMOKERS ARE 21 YEARS OF AGE AND YOUNGER"; right?

A. Yes.

Q. Is that consistent with your understanding?

MR. HOWARD: Objection, lack of foundation.

A. As I said, I'm not familiar with the document and I don't know the source of the information. I'm generally aware that a percentage of -- of smokers begin before they're 21.

Q. Okay. And the next line says "BUT, WE DON'T INTERVIEW ANYONE UNDER 18"; right?

A. Yes, it does.

Q. And the next line says "AS A RESULT, THE 18-TO-21 SEGMENT PROVIDES OUR BEST INSIGHTS INTO NEW

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

SMOKERS"; right?
A. Yes.
Q. What other insights could there be?
MR. HOWARD: Objection, ambiguous, vague.
A. I'm not sure I understand the question.
Q. Well three-quarters of smokers are 21 years of age or younger. Isn't the 18-to-21 segment 75 percent of all new smokers?
MR. HOWARD: Objection, lack of foundation.
A. As I said, I don't -- I don't know the statistics or the source of this information. A portion -- a proportion of smokers do choose to smoke before the age of 21.
Q. And a portion choose to smoke before age 18; right?
MR. HOWARD: Objection, lack of foundation, but you can answer.
A. I don't know that this -- this document infers that. My general understanding is some people do start smoking before age 18.
Q. The next page under "NEW SMOKERS," it says "PHILIP MORRIS IS VERY STRONG." Do you see that?
A. Yes.
Q. Do you know why?

http://legacy.library.ucsf.edu/tid/bbp05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

MR. HOWARD: Objection as to form.
A. Do I know --
Q. Why Philip Morris is very strong with new smokers.
A. I can't speculate as to what the intent was here. It's not very clear.
MR. GORDON: Can I have this exhibit marked.
(Plaintiffs' Exhibit 1309 was marked for identification.)
BY MR. GORDON:
Q. Let me show you what's been marked as Plaintiffs' Exhibit 1309, a document produced by Philip Morris bearing Bates stamp number 2023741642 through 1678, a document entitled "SMOKER DYNAMICS," and you can certainly look at it and compare it to 357, but I'll -- I'll represent to you that it's -- it's largely the same as 357, but there are a couple --
A. It looks very familiar, I mean, very similar to --
Q. Yeah. There are a couple of pages in 1309 that don't appear in Exhibit 357, and it's those pages I want to talk to you about. And they're found at -- at the back on, if you'll look at the Bates numbers,

http://legacy.library.ucsf.edu/tid/bpn95a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/mqhd0001

1676 and 1677.

A. Is that this black number?

MR. HOWARD: Yes, the Bates number.

A. 1676?

Q. Right. The title is "SUMMARY, PM SHARE OF SMOKERS."

A. Yes.

Q. Okay. And I direct your attention to the -- the bottom line that says "NEW SMOKERS, 67.5." Do you see that?

A. Yes.

Q. Is that consistent with your understanding that -- in other words, that Philip Morris was getting 67.5 percent of the new smokers?

MR. HOWARD: Objection, lack of foundation, but you may answer.

A. I'm not -- as I said, I'm not familiar with the document so I don't know the source of the information or the intent of the author. I -- I can't quote a statistic. Certainly Philip Morris does get some portion of people who decide to smoke and in the process of making their brand choice choose ours.

Q. Is it as much as two out of three?

MR. HOWARD: Objection, lack of

http://legacy.library.ucsf.edu/tid/bpn05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

foundation. You can answer.

A. I -- I can't recall ever having seen data that speaks to that.

Q. You don't know?

A. I'm not aware.

Q. Philip Morris doesn't do anything to find out how many -- what percentage of new smokers it's -- it's attracting?

A. No, I would imagine there is -- there could have been data available that could have -- there could be studies. There could be information on our consumer tracking database that asks those questions. I just -- I just can't recall if -- if that data is there or, if it is, what it would be.

Q. As the vice president of marketing -- marketing, are you interested at all in what percentage of new smokers Philip Morris is getting?

A. What I'm most interested in is -- is the brand share of smokers of my various brands. To the extent that we would have information like that, certainly there would be people in the organization that would look at it. It's not something I look at. As I said, I'm not aware that -- that it exists or, if it does, what -- what our share would be.

Q. Philip Morris carefully studies the percentage

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/mqhd0001

of people switching out of Philip Morris brands and switching into Philip Morris brands, doesn't it?

A. PM from time to time has -- will track inflow and outflow and alternate purchases and -- and switching patterns.

Q. And as --

As vice president for marketing, aren't you interested in -- in knowing what those switching patterns are?

A. In -- in my job, my responsibility, I am -- I'm interested in -- in -- in the general trends as it relates to, yeah, our brands.

Q. So your --

A. Is --

Q. I'm sorry.

A. Whether or not inflow or outflow or alternate purchase or switching is on a -- on a trended basis increasing or decreasing.

Q. So you're not just interested in the absolute number of -- of sales and -- and what share of market that those sales represent. You're interested in the -- the number of switchers into and out of Philip Morris products that those numbers represent; right?

A. I -- when I see information like that, I tend to see it in -- in a very summary form in a -- as I

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indicated earlier, in a trend basis as opposed to an absolute basis. What's of interest is if I have an objective of maintaining or increasing brand loyalty amongst the smokers of Merit, for example, the -- a piece of information or some pieces of information that I would look at -- look at on a trended basis is are switching patterns shifting at all or staying the same over time, are alternate purchase patterns of our Merit smokers changing over time.

So I tend not to look at absolute numbers but, as I said, trends over time to look for patterns and behavior.

Q. Right. And switching -- switching patterns are one measure of the effectiveness of your marketing programs; right?

A. It is one measure. That would be, yes.

Q. And percentage of new smokers is another measure of effectiveness of your marketing program, isn't it?

A. I suppose that -- that the pool of people at any point in time who have decided to smoke and haven't chosen a brand and choose my brand could be a measure of that.

Q. But you don't routinely study that?

A. I don't routinely study those details because,

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as I indicated earlier, I see information in the aggregate and trends in terms of the behavior of smokers within the brand.

Q. And as you sit here today, you have no idea what percentage of new smokers Philip Morris is getting?

A. No, I can't say that I -- that I'm aware of that statistic. I -- I would tend to look at information on a brand's share, for example, of various age demos or age cohorts, is that increasing or decreasing. As I said earlier, the data may exist. The data may indeed exist in consumer tracking. It's not a piece of data that -- that I recall being aware of or that I look at.

Q. Okay. If you turn to the next page, please, do you see the line in about the middle of the page where it says "WE'RE DOING A GREAT JOB OF ATTRACTING NEW SMOKERS AND RETURNING SMOKERS"? Do you see that?

A. Yes.

Q. Do you agree that Philip Morris is doing a great job of attracting new smokers?

MR. HOWARD: Objection as to form. You can answer.

A. As I said, I don't -- I'm not familiar with the document. I don't know what this statement is based

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on, if it's based on speculation or data. I have no way of -- I have no way of assessing that.

Q. Well how would you characterize the job that Philip Morris is doing of attracting new smokers?

MR. HOWARD: Objection, time frame.

A. The primary way that I assess the effectiveness of our -- of our marketing and advertising programs is am I -- are we increasing our share of market, is a brand increasing its share of market, and as I -- as I stated earlier, that's -- that's the primary measure that I look at, that I'm interested in. That is influenced by a number of different possible factors, increased share of purchase requirements amongst loyal smokers, less alternate purchase, switching into the brand or less switching out of the brand, people coming into the marketplace and looking to make a brand choice and -- and making this a brand choice. But the overall measure that I'm focused on is am I increasing my share of that brand in the marketplace.

Q. Who's your superior?

A. Mike Scymancyk.

Q. That's the new CEO?

A. That's correct.

Q. Up until a few days ago, it was Jim Morgan?

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A. No. Actually in Mike's previous role as chief operating officer I also reported to him.
Q. Okay. Did he or Jim Morgan ever ask you how Philip Morris was doing with attracting new smokers?
A. I -- I don't recall that either of them have asked me that. They asked me lots of questions as to how -- how the brands are performing in terms of market share, in terms of their share of different retail trade classes, in terms of their share geographically, in terms of their share of various age and demographic cohorts. That --
Q. So --
So if Mike Scymancyk were to call you up tomorrow morning and say, "Tell me, how -- what kind of a job is Philip Morris doing with attracting new smokers? I want to report to the board of directors," you'd have to say, "Don't know"?
MR. HOWARD: Objection as to form.
A. As I said, I can't recall him ever asking that. I can't envision why he would -- would ask a question like that. If he did, in your hypothetical example, my first approach would be to find out if -- if that information exists and where it exists.
Q. Why is it that you can't imagine why the chief executive officer of a consumer product company would

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be interested in knowing how good a job its marketing department was doing in attracting new consumers?

A. Well because what he would be focused on is looking to me to increase our share of market overall, which can include increasing our share of market for a particular brand or holding on to a share of market of another brand and overall are we increasing market share, what -- he would be interested in the -- the results at the end of the day.

Q. And you just can't imagine that he'd have any curiosity as to how successful the marketing department was in attracting new consumers to the Philip Morris product line?

MR. HOWARD: Objection as to form and the use of the word "new consumers" as opposed to "new smokers."

A. He certainly might be interested in the same kind of measures that I had indicated earlier in terms of how we're doing overall or how a particular brand or the brands in general are doing relative to various measures and as a result an increase in market share.

THE REPORTER: Off the record, please, to change tape.

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(Recess taken.)

BY MR. GORDON:

Q. Mr. Mikulay, just I'm trying to understand your testimony with respect to Philip Morris's marketing efforts and how it relates to attracting new smokers. Is it your testimony that Philip Morris simply doesn't care about attracting new smokers?

A. What I was trying to describe is that what we're concerned about and what I look at is our -- the share of our brands in the marketplace and whether or not they're going in the right direction, hopefully increasing or in some brands that may not be positioned as well in the marketplace as other brands holding that market share, and there are lots of components of that, consumers of those brands not switching out, not -- minimizing their purchase of alternative products, competitive smokers switching in, smokers who have recently decided to smoke and are making brand choices, to your description, new smokers.

So to the extent that all of those factors contribute to positive share growth, that's what I'm interested in. And -- and I'm interested in -- in all of those factors.

What I was trying -- what I was trying to

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indicate is I don't look at that data on a day-to-day basis. I look at trends and overall performance, but for adults who have chosen to smoke, I'm interested in as many of them as possible choosing my brands or staying with my brands, be they someone who's just making a brand choice or has made a brand choice and decided to stay with us.

Q. Philip Morris can lose existing customers if they switch to a competitive brand; right?

A. That's correct.

Q. That's called switching out; right?

A. That's correct.

Q. And Philip Morris can lose an existing customer if that customer quits smoking; right?

A. Correct.

Q. That's referred to as a quitter; right?

A. Correct.

Q. And Philip Morris also loses a customer if the customer dies; right?

A. Correct.

Q. Okay. And all three things happen on a daily basis; right? People switch out and people quit and people die; right?

A. On an ongoing basis, all those things happen.

Q. And the only way you can replenish those

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customers that you lose is by, number one, people switching in; number two, quitters restarting; and number three, new starters. Right?

MR. HOWARD: Objection to the term "replenish," but you can answer.

Q. New smokers.

A. Yes.

Q. And marketing --

A. Those are -- those are ways -- yes, those are ways that I can increase my market share. I can also increase my market share by increasing the share of purchase requirements of a particular -- of a brand-loyal consumer less alternate purchasing of competitive brands.

Q. Also if they increase their absolute consumption of cigarettes; right?

A. Theoretically, yes.

Q. If a pack-a-day smoker becomes a two-pack-a-day smoker and he's a Philip Morris smoker, he's going to increase consumption of Philip Morris products; right?

A. Theoretically, yes.

Q. Okay. And in terms of marketing, one of the marketing goals is to minimize switching out; right?

A. The overarching goal is to communicate to the

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loyal adult smokers of my brands. That's the largest segment of any brand share. That's the -- that's the smoker base that I'm most interested in retaining because those are, to your point earlier, the more loyal of my smokers. In addition to that, convincing smokers of competitive brands to try and switch to one of my brands is also a way of increasing market share, yes.

Q. Okay. But one of the subgoals of that overarching goal is to minimize switching out; right?

A. That's correct.

Q. And another subgoal is to maximize switching in?

A. That's correct.

Q. And another goal is to maximize the number of new smokers who choose Philip Morris as their first initial brand; right?

A. That's correct.

Q. Okay. Can't do anything about people dying. That's not an area of marketing that you can deal with; right?

A. That's correct.

Q. Okay. What about quitters? Does marketing have any goals with respect to people who are thinking

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about quitting?

MR. HOWARD: Objection as to form.

A. I'm not aware that there's anything in our -- in our marketing plans that would address -- that would address quitters with the possible exception of from time to time potential product modifications that might be addressing a particular consumer need, that.

Q. So for example, a -- a lower-tar version of a -- of a product so that somebody thinking of quitting might simply switch to a lower-tar version instead? Is that what you mean?

A. Actually what I was thinking about was a smoker in a single -- single-smoker household whose spouse finds cigarette smoke irritating or maybe has an allergy to it or whatever, and if there was a possibility, if we knew that, if we knew that was an issue for a segment of the smoking population and were able to design and market a brand that had less sidestream smoke from the lit end, that might be a benefit that that consumer would be interested in.

Q. Well, how about my example? Is -- isn't one of the purposes of having low-tar offerings to provide an alternative for people who are thinking about quitting so that they stay with the smoking Philip Morris brand rather than quitting?

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A. The purpose of -- of PM participating in -- in all relevant segments of the marketplace is if there is a consumer demand there, we'll participate in that segment with the best product we could possibly manufacture and market it as such. And there -- there has been over the last 20 years, as an example, an increasing demand on consumers for lower-tar products, and whereas Philip Morris wasn't, to my recollection, the first marketer into that, into those segments, once -- once consumer demand was recognized, we were very aggressive at participating in -- in most, if not all, viable categories.

Q. You would agree that Philip Morris has an affirmative duty to actively discourage youth from smoking; right?

MR. HOWARD: Objection to the term "duty." You may answer if you're able.

A. Philip Morris believes that minors should not smoke, and we've taken steps in programs like Action Against Access to discourage youth smoking and access to products, working with state legislatures like the state of Minnesota to help them address that issue, enforce existing laws.

Q. Have you ever had occasion to compare your marketing and promotion budget versus the amount of

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money you actually spend on trying to prevent youth smoking?

A. No, I've never looked at that.

Q. I'd like to show you what's been previously marked as Exhibit 602, and I'll represent to you this is an expert report prepared by one of plaintiffs' experts, and I'm going to -- I'm going to -- it's a lengthy report. I'm going to -- there's only one page I want to show you on it, and I'm going to open it to the page. You're certainly free to look at the entire report if you want.

The page I'm showing you is entitled "Philip Morris, Youth Prevention Expenditures to Advertising, Marketing & Promotion (1969-1994)." And this -- this pie chart reflects advertising, marketing and promotion expenditures of a little over 18 billion versus youth prevention expenditures of about 20 million.

My question is: Do you have any independent reason to dispute the figures or the relative amounts of expenditures?

MR. HOWARD: Objection, lack of foundation, unfair question.

A. As you've already pointed out, I wouldn't be familiar with the document. I have -- I would have

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no way to confirm or refute the information.

Q. Well you're familiar with expenditures, aren't you, for marketing?

A. Yes, I am.

Q. Does 18 billion over the last 25 years or the 25 years from '69 to '94 sound about right?

MR. HOWARD: Objection, lack of foundation. I think, --

A. I'm not --

MR. HOWARD -- Mr. Gordon, to be fair, you should give him a chance to take a look through the entire document, --

MR. GORDON: Sure.

MR. HOWARD: -- just not referring to one page, if there's some indication in the document as to how that number was arrived at.

MR. GORDON: Sure.

MR. HOWARD: To save time, do you want to point to the -- point out to the witness where in this report the components of that figure on the pie chart --

MR. GORDON: I think they appear on the --

MR. HOWARD: -- were arrived at?

MR. GORDON: -- very first page of text right after the table of contents.

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And the source I believe -- I'm trying to find where it's set forth, but it's discovery responses and annual reports. Maybe it's at the back.

MR. HOWARD: I -- I see the figure, but it's just in conclusory fashion on that page. I'm asking whether in this report it lists what the components are that comprise --

MR. GORDON: Oh, I see.

MR. HOWARD: -- the $18 billion figure.

MR. GORDON: Yeah, it's -- if you flip to the back page, I don't know how readable it is. It's pretty tiny type.

A. The very last page?

Q. Yeah.

MR. HOWARD: Can you read that?

Q. Are you able to read that? It's about the size of your "underage sale prohibited" that you put on the side of cigarettes.

MR. HOWARD: Objection, Counsel. It's about a 20th of that size.

Q. It's a pretty poor photocopy.

A. Yeah, I can't tell. One of the costs of aging is inability to see mouse type.

Q. So you don't have any independent knowledge whether 18 billion is a reasonable figure for the 25

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years of advertising, marketing and promotion or not?

A. I don't have any basis to -- to confirm or deny, no.

Q. What's the advertising, marketing and promotion budget for this year?

A. For 1997 the total marketing budget is approximately 1.5 billion.

Q. How much is the youth prevention budget?

MR. HOWARD: Objection as to form.

A. I'm not aware.

MR. HOWARD: I'm not aware of what protective orders are in place, but obviously the question's going to 1997 marketing budgets, confidential information, and I take it that we're having the opportunity to review and designate as confidential portions of this --

MR. GORDON: You do.

MR. HOWARD: -- deposition.

MR. GORDON: Yes, you do. You have 30 days.

MR. HOWARD: Thank you. Thank you, Mr. Gordon.

MR. GORDON: Thanks. I have nothing further.

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THE REPORTER: Off the record, please.

(Deposition recessed at 6:51 o'clock p.m.)

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C E R T I F I C A T E

I, William C. LaBorde, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of CLARE PURCELL, KENNETH S. HOUGHTON, ELLEN MERLO AND ROBERT L. MIKULAY at the time and place aforesaid; and that the foregoing transcript consisting of pages 1 through 287, Volume I, is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at New York, New York, this 23rd day of September 1997.

WILLIAM C. LaBORDE
Registered Professional Reporter
Notary Public

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C E R T I F I C A T E

I, CLARE PURCELL, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 1 through 85, Volume I, and that said transcript is a true and correct, full and complete transcription of my deposition, except per the attached corrections, if any.

(Please check one.)

____ Yes, changes were made per the attached (no.) ____ pages.

____ No changes were made.

CLARE PURCELL
Deponent

Sworn and subscribed to before me this day of 199__.

Notary Public

My commission expires: (WCL)

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I, KENNETH S. HOUGHTON, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 86 through 140, Volume I, and that said transcript is a true and correct, full and complete transcription of my deposition, except per the attached corrections, if any.

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KENNETH S. HOUGHTON
Deponent

Sworn and subscribed to before me this day of 199__.

Notary Public

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C E R T I F I C A T E

I, ELLEN MERLO, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 143 through 231, Volume I, and that said transcript is a true and correct, full and complete transcription of my deposition, except per the attached corrections, if any.

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ELLEN MERLO
Deponent

Sworn and subscribed to before me this day of 199__.

Notary Public

My commission expires: (WCL)

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I, ROBERT L. MIKULAY, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 237 through 287, Volume I, and that said transcript is a true and correct, full and complete transcription of my deposition, except per the attached corrections, if any.

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ROBERT L. MIKULAY
Deponent

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Notary Public

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